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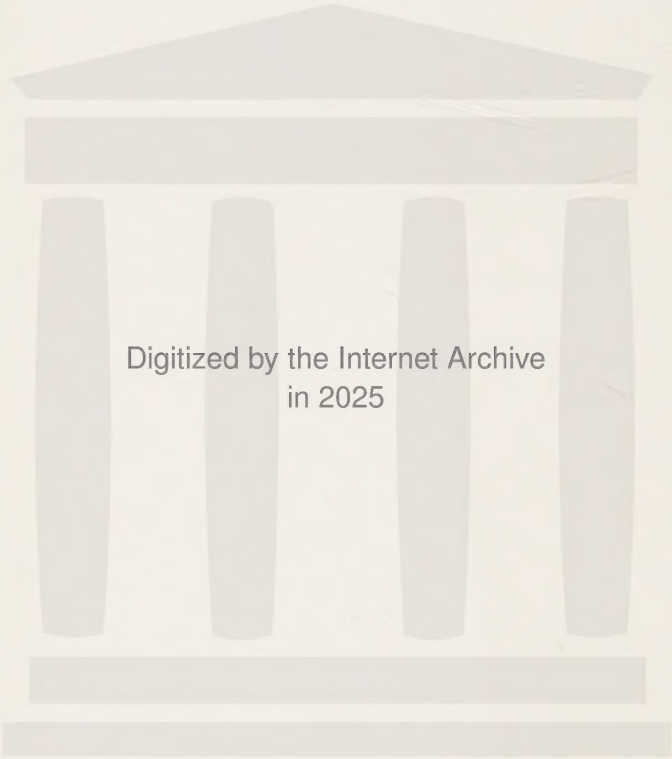
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THE PRACTICE AND LAW

OF

INCOME TAX AND SUPER TAX

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DOWELL'S

INCOME TAX LAWS

EIGHTH EDITION

BY

J. E. PIPER,

ASSISTANT SOLICITOR OF INLAND REVENUE

Revised, altered, and considerably enlarged, with complete Notes, Cross-References, Summaries of Statutory Provisions, Decisions and Sections on Crown Law and Procedure affecting the Revenue

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BUTTERWORTH & CO., BELL YARD, TEMPLE BAR, W.C.

THE

PRACTICE

AND

LAW

OF

INCOME TAX

AND SUPER TAX

BY

WM. SANDERS

ADMINISTRATOR OF INCOME TAX, GUERNSEY, AND FORMERLY LECTURER ON INCOME TAX TO THE BIRMINGHAM MUNICIPAL SCHOOL OF COMMERCE AND H.M. INSPECTOR OF TAXES

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PREFACE TO THIRD EDITION.

THE discontinuance of the Excess Profits Duty and certain relief given during or by reference to the war has necessitated the exclusion from this work of the relevant provisions. The addition of many amendments of the Income Tax law now gives a somewhat settled Income Tax code. Corporation Profits Tax, which is really an additional Income Tax, has been added.

WM. SANDERS.

INCOME TAX OFFICE,
GUERNSEY,
20 *October*, 1923.

PREFACE TO SECOND EDITION.

Many momentous alterations and introductions have been evolved since the publication of the First Edition. The House of Lords' decision in *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce,* has revolutionized the question of deductible expenses by defining, in effect, that profits for Income Tax purposes are, generally, synonymous with commercial profits, and thus characterizing the case as being the most important of the many Income Tax judicial decisions. The provisions introduced to meet the circumstances created by the existence of war by allowing in *inter alia* the re-enacted section 133 for reduced profits, and in the Excess Profits Duty for increased profits, are of particular financial moment, while the two Finance Acts of 1915 have produced several further points of minor importance. The latter Act has had a vital effect on the controversial question of deduction of tax from dividends. It is hoped that this second edition may prove of assistance in obtaining the many concessionary benefits of both the practice and the law.

WM. SANDERS.

Birmingham Road,
Lichfield,
9 *February*, 1916.

PREFACE TO FIRST EDITION.

It is hoped that this work may be of assistance in solving some of the many intricacies of the Income Tax. Much of the Income Tax law is grossly inequitable, and it is not contended that the practice is altogether removed from that undesirable element of injustice, but the practice is much more liberal than the law, and it remedies many of the glaring inconsistencies of the latter.

It is desired to emphasize the important point that concessions of practice and beneficent provisions of the law will not, in general, be extended to the taxpayer unless a demand is first made, and the result is that overpayment of Income Tax is of material prevalence. Moreover, the discretionary powers vested and admitted in the District Commissioners are particularly wide, and many of the controversial technical points of hardship need not be existent factors if the full extent of the Commissioners' powers is brought into operation.

The subject of Income Tax has, in recent years, become a specialized branch of Accountancy, and it is trusted that this work may prove of assistance to that profession.

Many persons interested in Income Tax, either financially or in a representative capacity, have not the facilities of a set of law reports, and the treatment in this Work of the many cases on which the interpretation of the Income Tax law depends, has kept in view, in some instances, the desirability of giving the outstanding principles, enunciated in

such cases, in the actual words of the judicial authorities, whose dicta are invaluable in prosecuting "appeals," and obviously carry more authority with the Commissioners than a revised version thereof. Smaller type is used for such dicta.

The most vital and most controversial characteristic of the Income Tax is that of deductible allowances, and, in order to facilitate reference thereto, the treatment of these deductions has, in Chapter III., been kept in alphabetical order.

The citation of reports of cases has been excluded from the body of the Work and given solely in footnotes, leaving only the year of decision in the main text.

WM. SANDERS.

BIRMINGHAM ROAD,
LICHFIELD,
16 *September*, 1914.

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LIST OF ABBREVIATIONS OF REPORTS.

A. C.	Law Reports, Appeal Cases, House of Lords and Privy Council.
App. Cas.	Law Reports, Appeal Cases, but earlier series.
Ch.	Law Reports, Chancery, Divisional Court and Court of Appeal.
Ex. D.	Law Reports, Exchequer Division.
F.	Fraser.
H. & C.	Hurlstone and Coltman.
I. R.	Irish Reports.
J. P.	Justice of the Peace.
Jur. (N. S.)	Jurist Reports (New Series).
K. B.	Law Reports, King's Bench, Divisional Court and Court of Appeal.
L. G. R.	Local Government Reports.
L. J.	Law Journal Reports, K. B. added for King's Bench, Q. B. for Queen's Bench, Ex. for Exchequer Division, and Ch. for Chancery Division.
L. T.	Law Times Reports.
M. & W.	Meeson and Welsby.
Q. B.	Law Reports, Queen's Bench Divisional Court and Court of Appeal.
Q. B. D.	Law Reports, Queen's Bench Divisional Court and Court of Appeal, earlier series.
R.	The Reports.
R.	Rettie.
S. C.	Session Cases.
Sc. L. R.	Scottish Law Reporter.
Sol. Jo.	Solicitors' Journal.
Tax Cas.	Tax Cases.
T. L. R.	Times Law Reports.
W. N.	Weekly Notes.
W. R.	Weekly Reporter.

INCOME TAX AND SUPER TAX PRACTICE AND LAW

CHAPTER I

ADMINISTRATION

An essential basis of a successful connexion with Income Tax is an acquaintance with the respective powers and limitations of the various officials engaged in the administration. The law of Income Tax is, in many respects, harsh and inequitable, but much of the prevailing hardship may be mitigated by an application of the practice in its existent broadness. It should, however, be taken as a general principle in connexion with the administration of the tax, that practically all desired and accepted points of equity which clash with the law, are never offered to the public but have to be demanded. The importance of this cannot be over-estimated, and, moreover, as the practice is, in general, left to the respective discretions of each local body of Commissioners, it follows that there is a lack of uniformity throughout the country.

It is, although inconsistent with a properly imposed tax, a vital fact that the Income Tax practice, as opposed to the actual law, has, in general, to be advanced *by the taxpayer* if he desires an equitable construction instead of the operation of a hard technical point in which the Income Tax Acts abound; therefore a comprehensive grasp of the constitution of the officials is a necessity to a successful practice in Income Tax.

The officials with whom a taxpayer is brought into contact

are Commissioners, Clerk to Commissioners, Inspector of Taxes, and Assessor and Collector of Taxes.

COMMISSIONERS.

Practically the sole conduct of Income Tax administration is entrusted by law to Commissioners, of whom there are two bodies—

(*a*) Local Commissioners, styled "Commissioners for General Purposes" and officially referred to as "District Commissioners";

(*b*) Special Commissioners.

The former bodies are distributed throughout Great Britain in divisions of varying size, while the latter have offices in London and hold meetings in certain centres. Ireland is dealt with by Special Commissioners alone.

The taxpayer may exercise the option of assessment by either body of Commissioners, but, comparatively, assessment by Special Commissioners is seldom resorted to. The advantages of the option are discussed at p. 14.

The local Commissioners are in no way interested in the amount of Revenue produced under their jurisdiction, and their duties are to see that the scales of justice are held fairly between the Inspector of Taxes and the taxpayer; and, in order to carry out the original intentions of the legislature, the Commissioners are allowed, for all material purposes, despotic discretionary powers on matters of hardship. The Commissioners may, in many instances, cast aside a harsh construction of a disputed point and adopt a construction consistent with equity and justice, except on certain definite and admittedly disputable matters, such *e.g.* as allowance in respect of wasting assets. Inspectors of Taxes often advocate adherence to points of law which are devoid of any pretence to equity, and, as the strict interpretation of such technical points (although flagrantly inconsistent with the obvious intentions of the framers of the law) is favourable to the Inspector of Taxes' contention, he often gains his point, but the Commissioners' ruling on the

question is, with few exceptions, accepted by the Inspector of Taxes as conclusive. On a point of *law* the Inspector of Taxes has power to demand a case to be stated by the Commissioners for the opinion of the High Court, but this is an exceptional proceeding, as the position of the Commissioners from the point of view of admitted discretionary power is one which the Board of Inland Revenue (under whose authority Inspectors of Taxes are placed) recognizes as being necessary to the satisfactory working of a tax of the peculiar characteristics of the Income Tax. The extent of the practice of Income Tax being widely divergent from the actual law, and such practice being only brought into operation on the demand of the taxpayer, it is necessary that the functions of the Commissioners, who control the practice, should be thoroughly understood.

The District Commissioners are *absolutely* independent of the Board of Inland Revenue and of any other Government department, except in irrelevant details such as increasing the number of Commissioners (Income Tax Act, 1918, sec. 59 (3)).

Appointment of District Commissioners.—District Commissioners, who form an honorary body analogous in operation to a bench of Magistrates, are appointed by Land Tax Commissioners—a body considerably extended by the Land Tax Commissioners Act, 1906, which Act, in practice, is defunct. Magistrates are ex-officio Land Tax Commissioners. The duties of the latter Commissioners are, in effect, restricted to the appointment of District Commissioners, a duty of very occasional recurrence. In some cases co-optation is the method adopted.

The appointment is governed by secs. 59, 60, 63 & 65 (3) of the Income Tax Act, 1918.

Number of Commissioners. - The meeting of the Land Tax Commissioners is given notice in the *London Gazette* for England and Wales, and the *Edinburgh Gazette* for Scotland, and as this notice is the only one statutorily requisite, the attendance at the Meeting is usually confined to the District Commissioners of the particular district (who are of course

also Land Tax Commissioners), thus instituting co-optation. In some instances an advertisement of the Meeting is inserted in a local County paper. The Meeting is convened by the Clerk to the District Commissioners.

The number of District Commissioners for a division or district is fixed at seven by sec. 59 (3) of the Income Tax Act, 1918, which also requires the making of a list of seven to supply vacancies.

Extensions are authorized by sec. 63 of the Income Tax Act, 1918, which allows District Commissioners to appoint further Commissioners not exceeding seven in number "observing, in the case of any such appointment, the same rules as in the appointment of general Commissioners by the Land Tax Commissioners, **provided that in any such case no addition shall be made to the number of persons to supply vacancies.**"

Sec. 59 (3) of the Income Tax Act, 1918, also provides that the Board may, if they think fit, authorize the increase of the number of persons to be chosen general Commissioners for any division, **and of persons to supply vacancies** amongst such Commissioners to any number not exceeding fourteen respectively.

On the Meeting being held a selection is made to fill vacancies, if any, and also to bring the list to supply vacancies up to its standard of seven or fourteen. Residence in the division is not an essential of appointment.

A list of the names selected at the Meeting should be forwarded to the Board of Inland Revenue.

Increase in Number.—Sec. 59 (3) (i) of the Income Tax Act, 1918, in dealing with quarterly assessment of manual workers, allows the general Commissioners, if they think it necessary for expediting the hearing of appeals, to add to their number by appointment or co-optation of such persons "for the purpose" as they think fit.

Exceptional Methods of Appointment.—Additional appointments are authorized by sec. 59 (3) (ii) of the Income

Tax Act, 1918, in respect of the under-mentioned cities and towns, the Commissioners so appointed acting with those appointed in the ordinary manner.

City of London.—" Two Commissioners, and two to supply their vacancies, shall be named by the Mayor and Aldermen of London out of eight persons, four of whom shall be Aldermen, to be returned to them by the Common Council; two other Commissioners, and two to supply their vacancies, by the Bank of England " ; one other Commissioner, and one other to supply his vacancy, by the Royal Exchange Assurance Company and by the London Assurance Company, and three, with three to supply vacancies, by the Port of London Authority.

Norwich.—The Magistrates and justices of the peace for the City of Norwich are allowed to choose eight Commissioners and eight to supply vacancies, half of each to be chosen from such magistrates and justices and half from the inhabitants of the City.

Birmingham, Bristol, Exeter, Great Yarmouth, Hull, King's Lynn, Leeds, Liverpool, Manchester, Newcastle-upon-Tyne.—The magistrates and justices of the peace for these cities and towns, together with the justices of the peace for the county, riding, or division, wherein such cities or towns are situate, are authorized to select eight Commissioners and eight to supply vacancies.

A list of the above selections has to be forwarded to the Board of Inland Revenue.

The Commissioners selected by the Land Tax Commissioners, and by the above-mentioned methods, together act for the respective districts in which the said cities and towns shall be situate or shall in themselves form.

Scotland.—Commissioners may be appointed in Scotland by the Commissioners of Supply at the annual meeting held in pursuance of sec. 12 (2) of the Local Government (Scotland) Act, 1889, as well as by the ordinary method. (Sec. 59 (6) (*e*) of the Income Tax Act, 1918.) It is further provided by sec. 59 (4) that, " The sheriff depute and the sheriff substitute of

any county or division shall be ex-officio **and without other qualification** the general Commissioners for county or division."

Commissioners ceasing to act.—The removal of Commissioners from the acting list is governed by sec. 59 (5), which allows a vacancy to be created on a Commissioner dying or declining to act.

Qualifications.—The general qualification of a District Commissioner is either :—

(*a*) The possession in the United Kingdom of his own estate of lands, tenements, or hereditaments of an annual value of not less than £200 either freehold or copyhold, or leasehold having an unexpired term of not less than seven years " over and above all ground rents, incumbrances and reservations payable out of the same," or

(*b*) The possession of personal estate of the value of £5000, or, a personal estate or an interest therein producing an annual income of £200, or

(*c*) A combination of (*a*) and (*b*) producing £200 per annum (£100 personal estate being accepted as equivalent to £4 per annum), or

(*d*) Being eldest son of a person who is possessed of thrice of either of the values required above.

The above provisions apply to all *districts or divisions* in England excepting such cities and towns which are separate divisions for Income Tax purposes, other than the cities and towns for which there are exceptional methods of appointment (p. 4). The qualification required where the ordinary qualification does not apply is four-fifths of the latter, and such reduced qualification also applies to Wales and the County of Monmouth.

For SCOTLAND the qualification of a Commissioner for a *Shire* is either :—

(*a*) To be enfeoft in superiority or property, or possessed as proprietor or life renter, of lands in Scotland to the extent of £150 Scots per annum valued rent, or

(*b*) or (*c*) (*supra*), or

(*d*) Being the eldest son of a person enfeoft or possessed of an estate of twice of either of the said values. The qualification for any City or Borough in Scotland, forming a separate division, is three-fifths in value of that requisite in the case of a Commissioner for a Shire. (See also sec. 59 (4) of Income Tax Act, 1918, p. 5).

It is provided by sec. 65 (*a*) of the Income Tax Act, 1918, that "no estate consisting of lands or tenements shall be required to be situate in the division for which any person shall be a Commissioner."

On a Commissioner being appointed he is requested to state by letter that he is legally qualified to act, but he can be required so to state on oath.

A financial qualification is not required in the following cases :—

> No qualification shall be required as a commissioner for any county division in Scotland for any provost, baillie, dean of guild, treasurer, master of the merchants company, or deacon convenor of the trades for the time being of any royal burgh in Scotland, or any baillie for the time being of any borough of regality or barony of Scotland who shall be respectively Land Tax Commissioners for any county in Scotland. (Sec. 65 (1) (*c*) of Income Tax Act, 1918.)

Additional Commissioners.—The law provides for appointment of "Additional Commissioners" who, theoretically, are formed into local committees, but, in practice, advantage is taken of sec. 63 of the Income Tax Act, 1918, which permits the General Commissioners to execute the duties required of the "Additional Commissioners." These duties consist of making the initial Schedule D assessments so that the appeals against such assessments, being heard by the General Commissioners, are not determined by the actual individual Commissioners who made them. The practice is, therefore, for any two of the General Commissioners to sign a particular Schedule D book of assessments as Additional Commissioners and for those two Commissioners not to hear the appeals against

such particular assessments for the year in which they so act as Additional Commissioners.

Additional Commissioners may, however, be specifically appointed by and at the discretion of the General Commissioners in such number as the latter may think fit, unless the option of increasing the number of General Commissioners under sec. 63 of the Income Tax Act, 1918 (p. 4), has been taken. Not more than seven Additional Commissioners may sit together at a meeting.

The qualification of an Additional Commissioner is one-half of that for a General Commissioner.

Meetings of Commissioners.—The holding of meetings of Commissioners outside the division for which they act is permitted with the consent of the Board of Inland Revenue, but the Commissioners have the sole discretionary powers in the instances mentioned in sec. 65 (2) of the Income Tax Act, 1918, which enacts that :—

> Provided that any such meeting may be held and any such duties may be executed within any city, town, or place, being a county of itself, or otherwise having exclusive jurisdiction, which adjoins the respective divisions of the commissioners.

A failure of the Commissioners to hold meetings within prescribed times does not render invalid the subsequent holding of such meetings except in the case of appointment of collector, as at p. 11.

Property of Books.—The law provides that "assessments, duplicates of assessments, minute books, and other public books and papers" relating to the Income Tax and in the custody of any clerk, assessor, or collector, are the property of the Commissioners (sec. 218 of Income Tax Act, 1918).

Oath of Secrecy.—Before commencing to act, a Commissioner has to make the following declaration of secrecy which, as with Clerks to Commissioners, Assessors, Surveyors of Taxes, &c., applies only to Schedule D. The Income Tax Acts do not provide for the secrecy of matters pertaining to Schedule E.

I, A. B.,
of C.,
do solemnly declare that I will truly, faithfully, impartially and honestly, according to the best of my skill and knowledge, execute the powers and authorities vested in me by the Income Tax Act, 1918, and that I will exercise the powers entrusted to me by the said Act in such manner only as shall appear to me necessary for the due execution of the same; and that I will judge and determine upon all matters and things which shall be brought before me under the said Act, without favour, affection, or malice; and that I will not disclose any particular contained in any schedule, statement, return or other document delivered with respect to any tax charged under the provisions relating to Schedule (D) of the said Act, or any evidence or answer given by any person who shall be examined, or shall make affidavit or deposition respecting the same, in pursuance of the said Act, except to such persons only as shall act in the execution of the said Act, and where it shall be necessary to disclose the same to them for the purposes of the said Act, or to the Commissioners of Inland Revenue, or in order to or in the course of a prosecution for perjury committed in such examination, affidavit or deposition.

CLERK TO COMMISSIONERS.

The Clerk to the Commissioners is an official with whom the taxpayer is seldom brought into contact, but, as adviser to the Commissioners, he wields the enormous discretionary powers vested in the latter, and his position is intended to be that of an intermediary between the demands of the Revenue and the rights of the public. In many districts the Clerk to Commissioners, under the existing practice, occupies a secondary position, a proceeding which is detrimental to the taxpayer. It cannot be too generally recognized that the Clerk to Commissioners, as the Commissioners' representative, has ample power to prevent Crown domination and to secure justice for the public, but, as with Income Tax practice generally, it is essential that the taxpayer *demands* the operation of the powers in question.

Appointment.—The Clerk to Commissioners holds an annual appointment which has to be renewed at the first meeting of the Commissioners in the year, which meeting is to be held before the 10th April in England and before the

30th April in Scotland (but see p. 11). An Assistant Clerk may also be appointed if the Commissioners so desire.

No fee is to be paid by the public to a Clerk to Commissioners "for anything to be done by him as Clerk."

Remuneration.—Clerks to Commissioners were formerly paid by poundage, but, in 1891, a commuted allowance was substituted on the basis of the amount paid in poundage for the year 1890. The Treasury, on the recommendation of the Board of Inland Revenue, may grant such "additional remuneration as they may deem expedient." The practice in obtaining increased allowances is not uniform, some Clerks to Commissioners making application to the Board year by year and others doing so at lengthy intervals. Owing to the considerable expansion of the work of the Clerk to Commissioners, additional allowances are granted on the statistics proving such expansion.

A question arises on the Board of Inland Revenue taking advantage of sec. 90 of the Income Tax Act, 1918 (p. 15), and transferring part of one division to another. The Board has no specific power to divide the remuneration of the Clerk to Commissioners in the former division, and has refused to increase the remuneration of the Clerk to Commissioners in the latter division, but, as the Board has power to create a new division out of detached parishes (sec. 94), it is obvious that the Board must have power to find remuneration for the Clerk to Commissioners of a new division, therefore under such powers the Board could award extra remuneration to the Clerk to Commissioners of the enlarged division. Moreover, by sec. 69 (8) of the Income Tax Act, 1918, the Treasury is authorized in certain cases to assign, "if they think special circumstances require it," such remuneration as the Treasury may deem expedient.

INSPECTOR OF TAXES.

The appointment of Inspector of Taxes is a competitive Civil Service appointment. The limited powers of this official are dealt with at p. 315. The bulk of the work of making

Assessments is performed by the Inspector, who is the official in most frequent connexion with the public. His powers are mainly existent under the implied authority of the Commissioners, as he has no statutory authority to demand the production by the taxpayer of any accounts or material particulars, but the refusal of necessary information is to be strongly deprecated.

ASSESSORS AND COLLECTORS.

The offices of Assessor and Collector of Taxes, which are distinct in law, are usually held by the same individual, who is annually appointed by and is *solely* under the authority of the Commissioners. Although one Collector is legally sufficient for a parish, two Assessors have to be appointed, the second having in practice no remuneration, nor duties apart from signing a few papers. While the acceptance of the office as Collector is optional, that of Assessor is compulsory.

The preliminary to appointment as Assessor is the issue of a precept of the Commissioners requiring the Assessors to attend a meeting of the Commissioners at a date (" not exceeding ten days after the date of the precept ") to be appointed, and this *precept* must be issued before the 10th April in England, and before the 30th April in Scotland. The procedure with Collectors commences with a nomination, which takes place at the said meeting, but, as it is required by sec. 80 of the Income Tax Act, 1918 that the nomination shall be made in the month of April, the extensive practice of holding the meeting in March in order to effect an early commencement of the Assessor's work is condemnatory, as, under such an arrangement, it could be maintained that Collectors had not been appointed in law, a point which is of particular moment in view of sec. 81, which is as follows :—

> If for any year of assessment a Collector for any parish shall not have been appointed on or before the thirty-first day of May the power to appoint a collector for that year, and for every subsequent year, shall absolutely vest in the Commissioners of Inland Revenue, and they shall appoint a Collector for that parish accordingly.

In some parishes the Board of Inland Revenue now appoints Collectors.

The Assessor's duties are, in practice, mainly restricted to issue of forms of return (p. 327), as the Inspector of Taxes performs many of the legal duties of Assessors. The Schedules A and B Assessments are made quinquennially (see p. 18), and in the years other than the " A and B year," the Inspector of Taxes acts as Assessor for the purposes of those Schedules (sec. 77 (3) of Income Tax Act, 1918).

Assessors in Metropolis.—The Metropolis, as defined by the Valuation (Metropolis) Act, 1869, has provisions under Schedules A and B distinct from those applicable to other parts of the United Kingdom, and the Inspector of Taxes is sole Assessor for such districts for the said Schedules (sec. 77 (2) of the Income Tax Act, 1918 (see p. 18).

Death of Collector.—A vacancy occurring by the death of a Collector must be filled within forty days from the date of death, otherwise the appointment *for the year only* vests in the Board of Inland Revenue (secs. 80 (8) and 84 (2) of the Income Tax Act, 1918).

Security.—A Collector of Taxes has to give security for the satisfactory collection of the tax to the Commissioners by whom he was appointed, or to the Board of Inland Revenue where the latter has secured the right of appointment. The security may be in form of either—

(*a*) a guarantee policy from a Guarantee Society ;

(*b*) a bond executed by an individual ; or

(*c*) a deposit of deeds with the Commissioners.

The guarantee policy is most generally adopted. The District Commissioners fix the amount of the security, which however has to be satisfactory to the Board of Inland Revenue, who are thereby able, generally, successfully to oppose the appointment of a person to whom they object, by demanding security in the full amount of the collection. This course has been followed in practice. A Guarantee Society would not issue a policy in such an inflated amount.

The fixing of the amount of the guarantee should be governed by the total collection, not by the amount held by the Collector in the intervals between paying into the Bank. The latter method alone is disadvantageous, as a Collector intending to default could expedite his collection before doing so. A satisfactory basis for the guarantee is 10 per cent. of the total of the annual collection.

See *Maxwell* v. *Nathan and others* (1915), 31 T. L. R. 828.

Collectors are under banking arrangements usually specified by the Commissioners, and have to pay in to the bank at weekly or other determined intervals to a separate "Taxes" account. The following scheme is now prescribed by the Board of Inland Revenue :—

> Under sec. 172 of the Income Tax Act, 1918, the Board is empowered to require a collector to remit weekly or oftener, and "may prescribe regulations to be observed by all collectors as regards remittances and the mode of making the same.

Remuneration.—The allowances by poundage were commuted in 1891, and additional remuneration may be granted as with Clerks to Commissioners (*ante*, p. 10).

METHODS OF ASSESSMENT.

A taxpayer has the option of choosing assessment by either of the following methods :—

(*a*) In the ordinary manner by the District Commissioners ;

(*b*) By the Special Commissioners ;

(*c*) By the District Commissioners under a "Number or Letter" (sec. 156 of Income Tax Act, 1918).

The latter system is, in practice, almost non-existent, while assessment by Special Commissioners has no numerical comparison with the first method.

Comparison of Methods.—Each of the above methods has certain advantages and disadvantages which are materially governed by the peculiar circumstances attending a particular case of assessment. The outstanding objection to assessment by the District Commissioners is the disclosure of private

financial affairs to local Commissioners, who may be rivals in business, a point which becomes of significant moment when production by the taxpayer of Balance Sheets is required.

Assessment by Special Commissioners disposes of the question of divulgence of business matters, but it has been aptly described as "stepping out of the frying-pan into the fire," owing to the considerable objections to which that method of assessment is open, as the Special Commissioners are a paid Government body and there is not, as with District Commissioners, an absence of official bias. The latter body, which is composed mainly of men of considerable business standing, is more likely to adopt an equitable construction of a hard technical point than is the body of Special Commissioners who are servants of the Crown. It is injudicious to place the making and determination of an Income Tax assessment in the sole control of State officials when there is available a system devoid of official prejudice, but if a particular body of District Commissioners is notoriously inequitably disposed it would be advantageous to select Special assessment. If the latter system is adopted the District Commissioners are in total ignorance of any facts relating to the assessment.

The last method of assessment under a "Number or Letter" only differs from the first method in that the collection of the tax is not placed in the hands of the local collector, thus preventing him from having possession of any private particulars in connexion with an assessment so dealt with.

PRINCIPLE OF ADMINISTRATIVE SYSTEM.

The true scope of the Income Tax administrative system may be seen from a comparison with that pertaining in local Courts of Justice. The Commissioners are analogous to the Magistrates, the Clerk to Commissioners to the Magistrates' Clerk, the Inspector of Taxes to counsel for the prosecution, and the taxpayer to counsel for the defence. The necessity of the Commissioners possessing extensive discretionary powers and of their being efficiently advised thereon, is evident from

the fact that the Inspector of Taxes is an expert in Income Tax matters and is, on appeals, opposed to taxpayers who have not had the extensive experience possessed by Inspectors.

PARISHES.

The Poor Law parishes in England and Wales, excepting the City of London, are the parishes for Income Tax purposes, and the divisions, which comprise from one parish upwards, coincide generally with the old Land Tax Hundreds, but it is provided by sec. 90 of the Income Tax Act, 1918, that where a parish is in two or more counties or divisions the whole parish shall be transferred to the division which includes that part of the parish which contains the Church.

Where a parish or part of a parish is detached from the main body of the county to which it belongs, the Board of Inland Revenue may, by sec. 94 of the Income Tax Act, 1918, order as follows :—

> Any detached area shall for the purposes of this Act be added to any adjoining or other division or divisions, or be formed into one or more new divisions.

QUORUM.

The quorum of the Commissioners is two, except in the case of oaths which may be taken by one Commissioner (sec. 230 of the Income Tax Act, 1918).

IRELAND.

See Government of Ireland (Adaptation of the Taxing Acts) Order, 1922.

CHAPTER II

SCHEDULES A AND B

SCHEDULE A

ASSESSMENT under Schedule A covers annual values of property and the profits of a few trading concerns having an intimate connexion with land. The specific items of assessment are referred to in Numbers 1, 2 (p. 37) and 3 (p. 39) contained in the First Schedule of the Income Tax Act, 1918.

Number 1 reads as follows :—

> In the case of all lands, tenements, hereditaments or heritages capable of actual occupation, of whatever nature, and for whatever purpose occupied or enjoyed, and of whatever value (except the properties mentioned in Nos. II. and III. of this Schedule), the *annual value* shall be understood to be :—
>
> 1. The amount of the *rent* by the year at which they are let, if they are let at *rack rent* and the amount of that rent has been fixed by agreement commencing within the period of seven years preceding the 5th day of April next before the time of making the assessment ; or
>
> 2. If they are not let at a rack rent so fixed, then the rack rent at which they are worth to be let by the year.

This tax is commonly known as " landlord's property tax."

The above rule covers assessment on lands and buildings and is, therefore, of great importance, as practically all buildings come within its scope. Moreover, its effect on Licences payable in respect of Public Houses increases the advisability of securing a just assessment. These Licences amount annually to part of the annual value assessed to Inhabited House Duty, and the latter, with immaterial exceptions, follows the Schedule A figure, therefore it will be seen that if licensed premises are assessed under Schedule A on £100 (with a tax, after deduction of repairs, of £18 14*s.* 8*d.* with the 1923–24 rate in the £

of 4*s.* 6*d.*) an annual *payment* of £50 has to be made in respect of Licence duties with a Licence of one-half Inhabited House Duty value, thus every £ by which the Schedule A *assessment* is too high involves a loss, apart from the actual excessive Schedule A tax, of 10*s.*

Rack Rent.—If premises are let at a rack rent fixed by agreement within the period of seven years mentioned above, that rent is binding on the Commissioners and becomes the amount of gross assessment under Schedule A. A rack rent is the ordinary open-market annual value, the tenant paying tenant's rates and taxes and the landlord executing repairs. The definition in the instructions issued to assessors is as follows :—

> Rack rent is the yearly rent which a tenant has agreed to pay, or which he might reasonably be expected to pay (taking one year with another) if he undertook to bear all the usual tenant's rates and taxes, and if the landlord undertook to bear the cost of repairs, insurance and any other expense necessary to maintain the property in a state to command that rent.

If, however, the rent is not a rack rent, there being some other consideration such as improvements or repairs executed by the tenant, then the assessment falls to be made by the Commissioners on what is, in their opinion, the full annual value of the premises.

A " tied " rent paid by the tenant of a Public House who is tied to the owner to purchase beers solely from the latter, is not a rack rent but a nominal payment. The discounts allowed to a tied tenant are lower than those given to a tenant who is free to purchase his beers from any brewer, and, therefore, a tied tenant requires his rent to be less than if he were able to purchase in the open market. Discounts vary considerably, but one of the largest brewers in the country allows 22½ per cent. to a " free " tenant, and 20 per cent. to a " tied " tenant. The annual value of licensed premises is also determined by reference to the " takings," and a basis of 7 per cent. of the annual amount of the latter is a guide, in practice, to the annual value.

ASSESSMENT.

Schedule A assessments are made quinquennially, although the assessments made in 1903–4 were not superseded until 1910–11. The next new assessment is for 1923–24.

The continuance of the assessments in the intervening years is made by an annual section in the Finance Acts, such *e.g.* as sec. 16 (3) of the Finance Act, 1922, which enacts—

> The annual value of any property which has been adopted for the purpose either of income tax under Schedules A and B, or of inhabited house duty, for the year 1921–22, *shall be taken* as the annual value of that property for the same purpose for the year 1922–23; provided that this sub-section shall not apply to lands, tenements, and hereditaments in the administrative county of London with respect to which the valuation list under the Valuation (Metropolis) Act, 1869, is, by that Act, made conclusive for the purposes of Income Tax and inhabited house duty.

This provision was the subject of the important case of *Turner* v. *Carlton* [1909] (*a*), which decided that appeals could not be admitted in years other than the first of the quinquennial, on the grounds that the words "shall be taken" can only be legally interpreted as meaning "shall be taken conclusively." It was undoubtedly the intention of the legislature that the words should mean *shall be taken primâ facie until a cause of reduction be shown on appeal*, a condition which is supported by the legal provisions affecting the Metropolis, which allow revision of the assessment each year. The general practice is, however, to admit appeals (and therefore reductions) every year, and Inspectors of Taxes have been so instructed by the Board of Inland Revenue.

Sec. 26 of Finance Act, 1923 allows appeals in any year (from 1923–24 onwards).

See p. 22 for APPEALS, and sec. 31 of Finance Act, 1923.

Metropolis.—The assessment under Schedule A in the Metropolis is governed by the Valuation (Metropolis) Act, 1869, which makes the Poor Rate values applicable for Schedule A purposes.

(*a*) 1 K. B. 932; 78 L. J. K. B. 378; 100 L. T. 400; 5 Tax Cas. 395.

Definitions in the Act of gross and rateable values are as follow :—

> The term "gross value" means the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament, if the tenant undertook to pay all usual tenant's rates and taxes, and tithe commutation and rent-charge, if any, and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses, if any, necessary to maintain the hereditaments in a state to command that rent.
>
> The term "rateable value" means the gross value after deducting therefrom the probable annual average cost of the repairs, insurance, and other expenses as aforesaid.

Poor Rate.—In the first year of a quinquennial, copies of the Poor Rate assessments are inserted in the Schedule A books by the Assistant Overseers (who are paid by the Board of Inland Revenue for such work) as a guide in arriving at the latter value, but the "Gross Poor Rate" is neither binding on the Commissioners as a maximum nor as a minimum. Inspectors of Taxes have argued that the Commissioners cannot go below the Gross Poor Rate, but the contention is devoid of foundation, as no comparative value is in any way conclusive for Schedule A purposes.

In *Walker* v. *Brisley* (1900) (*b*) it was held that the Gross Poor Rate was not a maximum value.

In *Gundry* v. *Dunham* (1915) (*c*) the Schedule A assessment of a public house was made in 1910-11 at £35, when the Poor Rate assessment was £30, but in 1911 the latter was increased to £45, and additional Schedule A assessments were made accordingly. An appeal was preferred in 1910-11, but was not proceeded with by the taxpayer. The additional assessment was objected to on the following grounds :—

(*a*) That the original assessment was conclusive under sec. 57 (10) of the 1880 Act (now sec. 133 (2) of the Income Tax Act, 1918) (p. 334)).

(*b*) That the Commissioners had been controlled by the Poor Rate.

(*b*) 4 Tax Cas. 254. (*c*) 32 T. L. R. 142; 7 Tax Cas. 12.

(*c*) That the additional assessment created a double assessment as allowance was not made under Schedule D (p. 95).

The additional assessment was upheld on all grounds, and it was decided that (*a*) the original assessment had not been determined on appeal as the taxpayer withdrew the appeal; (*b*) the Commissioners had not been *bound* by the Poor Rate but had only considered it as a comparative value, and (*c*) that the question of the Schedule D assessment was not before the Court. There was evidence before the Commissioners that the open market value as a "free" house was £45.

Schedule A books in rural districts comprise several small parishes, and the work of the Assistant Overseers in such cases is often bordering on illegibility, therefore the better practice in these instances is to have the Poor Rates copied into the Schedule A books by the Assessor, who can receive the remuneration otherwise paid to Assistant Overseers. The production of the necessary parochial books is provided for by the sec. 114 of the Income Tax Act, 1918.

> (1) The general commissioners, surveyors, and assessors, or any person authorized by them or any of them may, respectively, in any place within the limits for which they act, from time to time, and at all seasonable times, **without the payment of any fee,** inspect, and take copies or extracts from any book kept by a parish officer or other person of or concerning poor rates or any other public taxes, rates or assessments, or concerning contributions under the management of the kirk sessions.
>
> (2) A person having the custody of, or power over, any such book who fails to permit such inspection, or the making of copies or extracts, *or to attend the general commissioners* with any such books when required to do so, shall for every such offence incur a penalty of £10.

The copy may either be made at the offices of the Assistant Overseer, or the Poor Rate books may be required to be deposited with the Commissioners. If objection to the latter method is raised by the Assistant Overseer, he may be required to attend the Commissioners with the book, and he then has the alternative of remaining while the copy is made, or leaving the book in the custody of the Commissioners and the Assessor.

For 1923-24 new assessment the Finance Act, 1922, provides as follows :—

32.—(1) The provisions of this section shall have effect for the purpose of enabling the annual values of properties for the purposes of assessments to income tax under No. I. and No. II. of Schedule A and to inhabited house duty for the year 1923–24 (in this Act referred to as "the said annual values"), to be determined during the year 1922–23, and of enabling the said assessments for the year 1923–24 to be made as soon as may be after the commencement of that year, and for that purpose all things necessary to be done for determining the said annual values, and all things preliminary to the making of any such assessments may be done, as well at any time after the commencement of this Act and before the sixth day of April, nineteen hundred and twenty-three, as at any time after the last-mentioned date.

(2) For the purposes aforesaid, the provisions set out in the Second Schedule to this Act shall have effect.

(3) The assessments to income tax under No. I. and No. II. of Schedule A and to inhabited house duty for the year 1923–24 shall be made by the General Commissioners on the basis of the annual values determined under this section for the year 1922–23 :

Provided that any person, who proves to the satisfaction of the General Commissioners that the annual value for the year 1923–24 of any land, tenement, hereditament, or heritage, or of any inhabited dwelling-house, in respect of which he has been assessed for the year 1923–24 is less than the annual value on which the assessment was based, shall be entitled to a reduction of the assessment to an amount based on the annual value for the year 1923–24, estimated in accordance with the rules applicable to assessments under No. I. or No. II. of Schedule A or the enactments relating to inhabited house duty, as the case may be.

(4) This section shall not apply as respects Scotland, or Ireland, or as respects lands, tenements or heritages in the Administrative County of London with respect to which the valuation list under the Valuation (Metropolis) Act, 1869, is by that Act made conclusive for the purposes of income tax and inhabited house duty, or to the appointment of assessors within the said county.

33. The parishes for which assessment of income tax and inhabited house duty are to be made for the year 1923–24, and for which assessors and collectors are to be appointed for that year shall, in England (elsewhere than in the Administrative County of London), be the parishes as existing for the purposes of poor law administration at the commencement of this Act.

The Second Schedule provides—

PROCEDURE IN CONNECTION WITH THE DETERMINATION OF ANNUAL VALUES FOR THE PURPOSES OF INCOME TAX UNDER SCHEDULE A AND INHABITED HOUSE DUTY FOR 1923–24.

(1) The General Commissioners shall, not later than thirty days after the commencement of this Act, appoint persons to be assessors of income tax chargeable under Schedules A and B and of inhabited house duty for the year 1923–24, issue the necessary instructions to the assessors so appointed, and appoint a day not later than the thirtieth day of November, nineteen hundred and twenty-two, for the assessors so appointed to appear before them and bring in certificates of their assessments of the said annual values.

(2) General and particular notices shall be issued requiring the statements containing the particulars prescribed by the Income Tax Acts, and the provisions of the Income Tax Acts relating to notices to deliver, the delivery of, and penalties for neglecting to deliver statements and declarations shall apply.

(3) The statements so to be prepared and delivered shall contain particulars relative to the year 1922–23, and the said annual values shall be estimated and determined as for the year 1922–23.

(4) The provisions of sections one hundred and twenty and one hundred and twenty-five of the Income Tax Act, 1918, and of section fifty-two (as amended by subsection (2) of section twenty-three of the Finance Act, 1907), and section fifty-six of the Taxes Management Act, 1880, shall, with the necessary modifications, apply with regard to the annual values to be estimated and determined in accordance with the foregoing provisions, and the General Commissioners shall cause notice of such assessments of annual values to be given.

(5) The provisions of subsections (1) and (2) of section one hundred and thirty-four of the Income Tax Act, 1918, and the provisions of the Income Tax Acts relating to appeals against assessments to income tax under Schedule A shall, with the necessary modifications, apply to notices to be given and to appeals in respect of annual values assessed under the foregoing provisions for the purposes of income tax under Schedule A; and the relevant provisions of the Acts relating to inhabited house duty shall apply to notices to be given and to appeals in respect of annual values so assessed for the purposes of that duty.

Appeal.—It is generally necessary in the case of Schedule A appeals that any appeal against the Poor Rate assessment should be first determined, as the Commissioners, although not

bound by the Poor Rate value, do not, as a rule, go below such value.

The following actual example of a Public House appeal illustrates this point and also shows the evidence required :—

The gross Schedule A assessment was £80, and the Gross Poor Rate assessment £62 10*s*. The figures supplied were as follow :—

	Gross Takings. £	Net Payments to Brewers. £
Year to 30th March, 1909	832	587
" " " " 1910	775	552
" " " " 1911	668	461
	3)2275	3)1600
	758	533

The average takings of £758 give, at 7 per cent., an approximate annual value of £53 and, moreover, the trade is obviously falling consistently. The Commissioners, however, would not reduce the Schedule A assessment of £80 to a lower figure than the Poor Rate of £62 10*s*. It should, however, be noted that the Gross Poor Rate is not binding and this fact is not generally before the Commissioners.

Return.—In the first year of a quinquennial, returns of rent payable are required of tenants, except in small property under £10 annual value.

VALUATION BY "PERSON OF SKILL."

The most important provision applicable to Schedule A is that enacted by sec. 138 of the Income Tax Act, 1918, which, in effect, substitutes assessment by an independent practising valuer for any biassed official assessment. *This provision does not refer to the Metropolis.* Valuations are discouraged by Inspectors of Taxes, as they generally result unfavourably to the Crown, a course the probability of which is obvious from the fact that the valuer is in no way interested in the amount of the assessment, and, moreover, he is in intimate connexion with the market values of property. This provision is of great value in the case of licensed property (see *ante*, p. 16).

(*a*) Section 138 reads :—

> (1) If *on appeal* against an assessment under Schedule A or Schedule B, any dispute arises as to the annual value of any lands, tenements, hereditaments, or heritages, the general commissioners may, if they consider it necessary, *and shall, if required by the appellant*, desire the appellant to cause a valuation to be made by a person of skill *named by them*, and may require the same to be verified on the oath of such person, *and the annual value shall be determined in accordance with that valuation.*
>
> (2) If the appellant does not proceed, with effect, to cause such valuation to be made, the commissioners shall determine the annual value according to the best of their judgment.
>
> (3) The costs and charges of any such valuation shall abide the final determination of the commissioners, and, if the value so found exceeds the value alleged by the appellant, the commissioners may order him to pay the costs and charges of the valuation, but if they are of opinion that such costs and charges have not been incurred through *any default of the appellant*, they shall issue an order for the payment of the said costs and charges by the Commissioner of Inland Revenue.
>
> (4) This section shall not apply within the administrative county of London.

(1) A valuation can only be demanded "upon appeal," and it is necessary to note that it is successfully contended by Inspectors of Taxes, on such demand being made immediately *after* the determination of the Appeal by the Commissioners, that the appellant's demand fails owing to sec. 133 (2) of the Income Tax Act, 1918, which enacts :—

> An appeal, once determined by the Commissioners, shall be final ; and neither the determination of the Commissioners nor the assessment made thereon, shall be altered, except by order of the Court when a case has been required as provided by this Act.

The Inspector contends, under the above provision, that the demand for a valuation must be made *before* the decision of the Commissioners is given, a course which is highly unreasonable, as an appellant cannot definitely know that the Commissioners' decision will be unfavourable until such decision is delivered. The position is made more inequitable by the fact that the Inspector does not acquaint the appellant with his view of the question until *after* the Commissioners

have determined the amount of the assessment. It is necessary, therefore, that, if an appellant sees that the Commissioners are not favourably disposed towards his claim, he should, before the assessment is determined, inform the Commissioners of his desire for a valuation to be made.

(2) The procedure is for the Commissioners to name the valuer to the appellant (see form of precept, *post*) leaving the appellant to transmit the precept to the valuer, in default of which the Commissioners' assessment stands. The valuer attends a subsequent meeting of the Commissioners and makes oath before a Commissioner as to the correctness of the valuation.

(3) The appellant is asked by the Inspector to place a value on the property, and a low value should not be given as the Inspector's object is to obtain a low figure with a view to the costs of the valuation being borne by the appellant. This anomalous condition results, in practice, in the appellant being mulct in costs when the valuer's figure is higher than that given by the appellant *but less than the assessment.* As the value stated by the appellant cannot influence the determination of the valuer, who is in ignorance of such value, understatement should be rigidly avoided.

(4) As regards the question of costs of the valuation, the words "any default of the appellant" are sufficiently wide to allow the Commissioners not to order the appellant to pay the costs when the valuer's figure is *not* less than the assessment, provided that the appellant's action in demanding the particular valuation is not vexatious and unnecessary.

(5) The value ascertained by the valuer is binding on the Commissioners.

The following precept is suitable for use in granting a valuation :—

INCOME TAX SCHEDULE A.

DIVISION OF

COUNTY OF

WHEREAS A. B. appealed on the day of 192 , against an assessment under Schedule A of the Income Tax

Acts made in respect of the premises situate in the said A. B. requested the Commissioners of Income Tax to grant a valuation in accordance with sec. 138 of the Income Tax Act, 1918.

Now we the undersigned, being the Commissioners who heard the said appeal, hereby give notice to the said A. B. that by virtue of the said Acts we name C. D. of as the person of skill to make the said valuation.

And we further direct that the said C. D. appears before us on the day of 192 , at a.m. at , to deliver his valuation and verify it on oath.

DATED the day of 192 .

Repairs and other Deductions.—The gross value of a Schedule A assessment is reduced to a net value, for the purpose of calculation of duty, by reduction in respect of repairs executed by the owner. Deduction is calculated on an amount equal to the gross Schedule A assessment plus the Tithe Rent Charge (see p. 28).

Deduction in respect of repairs is provided by Rule 7 of No. V. of Schedule A in the 1918 Act as amended by sec. 28 of the Finance Act, 1923, which enacts :—

(1) (*a*) In the case of an assessment on lands inclusive of the farmhouse and other buildings (if any), the amount of the assessment shall, for the purposes of collection, be reduced by a sum equal to one-eighth part thereof ; and

(*b*) In the case of an assessment upon any house or building (except a farmhouse or building included with lands in assessment), the amount of the assessment shall, for the purposes of collection, be reduced—

" (i) where the owner is occupier or chargeable as landlord, or where a tenant is occupier and the landlord has undertaken to bear the cost of repairs, by a sum equal to the amount of the authorised reduction hereinafter mentioned ; and

(ii) where a tenant is occupier and has undertaken to bear the cost of repairs, by such a sum, not exceeding the amount of the authorised reduction, as may be necessary to reduce the amount of the assessment to the amount of rent payable by him :

" Provided that the amount by which an assessment is reduced shall not, in the case of an assessment exceeding the amount of forty pounds, be less than it would have been if the amount of the assessment had been forty pounds."

The authorized reduction is, by sec. 28 :—

(*a*) Assessment not exceeding £40, one-fourth.

(*b*) Assessment exceeding £40, not exceeding £100, one-fifth.

(*c*) Assessment exceeding £100, £20 plus one-sixth excess of assessment over £100.

Sec. 28 allows appeals not later than 5th April, 1925.

The above commences to apply in 1923–24 and ceases, unless Parliament otherwise determines, on 5th April, 1928.

Up to 1922–23 inclusive the allowance of one-sixth applies instead of the allowances of one-fourth and one-fifth.

Where the assessment is more than the amount of the above allowances below the rent (*i.e.* the rent less any occupier's rates repaid by the owner, the above provisions do not apply.

An extension up to the actual cost in the case of both (*a*) and (*b*) is granted (by repayment) by Rule 8 of No. V. of Schedule A, on the owner proving that the cost to him of maintenance, repairs, insurance, and management has exceeded, on the average of the five preceding years, the respective allowances given on p. 26. The "year" is that ending 31st March, or such other date desired by the owner, and approved by the Inspector of Taxes.

Maintenance is defined as including replacement of farm-houses, farm buildings, cottages, fences, and other works where the replacement is necessary to maintain the existing rent.

The total cost of maintenance, repairs, insurance and management on any land managed as one estate, or of any houses on any such land shall, for the purpose of the extension, be compared with the total annual value of the land or houses.

The above extension is limited in its application, as it refers to all land (inclusive of farm-houses and buildings) which is subject to deduction of one-eighth, but only to houses

when the gross Schedule A assessment does not exceed the following amounts :—

GROSS SCHEDULE A ASSESSMENT.

	Metropolitan Police District (including City of London).	Scotland.	Elsewhere.
	£	£	£
Sec. 19 F. A. 1919 : 1919–20 . .	70	60	52
Sect. 29 F. A. 1920 : 1920–21 to 1922–23 (inclusive)	105	90	78

With market gardens one-eighth is allowed for land and one-sixth for glass houses.

Claims for repayment under Rule 8 may be made in respect of 1923–24 and the three preceding years. Sec. 30 (1) of the Finance Act, 1923 gives four preceding years for 1924–25, five preceding years for 1925–26, and six preceding years thereafter.

Deductions are allowed in respect of the following, which must be *claimed* :—

Land Tax payable in respect of the property assessed.

Drainage Rate, etc.—The amount charged by a public rate or assessment in respect of draining, fencing or embanking.

Sea Walls and Embankments.—"The amount expended by the landlord or owner of lands on an average of the twenty-one preceding years in the making or repairing of sea walls or other embankments necessary for the preservation or protection of the lands against the encroachment or overflowing of the sea or any tidal river, although the sums expended may not have been charged on the lands by a public rate or assessment" (Rule 1 (*g*) of No. V. of Schedule A).

Tithe Rent Charge.—The amount of the Tithe Rent Charge is deducted in arriving at the Schedule A assessment on the property in respect of which it is charged, and it is assessed separately on the tithe owner in one sum for the parish, less the deduction for costs of collection (see *Stevens* v.

Bishop, [1888] C.A.) (*d*) and also for rates "paid in the year in which the assessment shall be made."

Rates.—In the case of property let at rentals which include rates, the latter are deducted in ascertaining the Schedule A assessment. Scotland is additionally provided for by Rule 4 of No. 5 of Schedule A.

> Where it is shown to the satisfaction of the Commissioners of Inland Revenue that the landlord of lands in Scotland is by law
> (*a*) charged with any public rates, taxes or assessments, which in England are by law a charge on the occupiers of lands; or
> (*b*) charged with any public rates or taxes or other public burdens, the like whereof are not chargeable on lands in England,
> the said Commissioners shall cause such relief to be given in respect of tax as is just and reasonable in regard to the charge of the income tax on them in respect of an annual value exceeding by the amounts of such rates, taxes, assessments, and public burdens the charge of the said tax on landlords in England; and such relief shall be given either by abatement from the assessment or by repayment of the tax.

Flood.—Allowance may be claimed in respect of loss through flood and tempest (Rule 9 of No. V. of Schedule A).

Sporting Rights.

Schedules A and B assessments are in practice made on the full annual value including the value of sporting rights, except as follows:—

(1) If the land is let to one person, and the rights of sporting thereover are let to another person, the land should be assessed under Schedules A and B upon the occupier, and the sporting rights under Schedule A only, under No. II. Rule 7 (p. 38), upon the owner on the rent.

(2) If the land is *let*, and the sporting rights attached thereto are not let, no assessment is to be made in respect of the sporting rights, even though the owner shoots over the lands.

The practice is not, however, supportable in law.

(*d*) 20 Q. B. D. 442; 57 L. J. Q. B. 283; 58 L. T. 669; 52 J. P. 548; 36 W. R. 421; 2 Tax Cas. 249.

The assessment is laid under Rule 7 of No. II. of Schedule A. which charges "all other profits . . . arising from lands . . . not being in the actual possession or occupation of the party to be charged . . . the annual value shall be understood to be the average amount for one year of the number of years which, on the statement of the person to be charged, appears to the Commissioners to be fair and equitable. Tax shall be assessed and charged on the receivers of such profits or on the persons entitled thereto."

The charging provision to No. II. in the Income Tax Act, 1842, stated that "The annual value of all the properties hereinafter described shall be understood to be the full amount for one year, or the average amount for one year, of the *profits received therefrom* within the respective times herein limited." In the 1918 Act the above is superseded by the charge in each of the separate items under No. 2 being on the "profits." The basis of assessment should, therefore, be *profits* not *rent*.

In *Duke of Norfolk* v. *Lamarque* (1890) (*e*), it was held that "profits in No. II. does not mean profits in the sense of the net profits in a mercantile business," *but the Court had not before them the fact that the charging provision of No. II. is exactly that of No. III.*, which latter No. covers, *e.g.* mines, and the definition of "profits" in No. III. obviously applies to *net profits*. Moreover, if gross rent were intended to be the basis why should the average principle be incorporated? In the above case, moreover, it was held that the deduction sought, viz. cost of collection of manorial dues, was inadmissible, being made *out* of the profits, not in arriving at profits, whereas the upkeep of shootings is a necessary expense to obtain the income therefrom. Manorial dues are assessable under Rule 5 of No. II., and Baron Pollock presented the proposition "is it a deduction which is to be made before you can arrive at the amount which is to be returned by the person who is taxed?"

In *Stevens* v. *Bishop* (1888) (*ante*), the costs of collection of

(*e*) 24 Q. B. D. 485; 59 L. J. Q. B. 119; 62 L. T. 153; 38 W. R. 382; 2 Tax Cas. 579.

tithe rent charge were allowed as being *necessary* expenses and expenses which a purchaser would have to allow for.

In interpreting the charging provision to No. III. in the 1842 Act, Lord Penzance, in *Coltness Iron Co.* v. *Black* (1881) (*f*), held that the words "'profits received therefrom' in this connection mean, I think, the entire profits derived from the *mine*, deducting the cost of working it, but not deducting the cost of *making* it." These words are strictly applicable to shootings, with the substitution of "shootings" for "mines" and "acquiring" for "making."

The cases of *Middleton* v. *I. R.* (1876) (p. 44) and *Revell* v. *Scott* (1895) (p. 44) are irrelevant, as the assessments were there made under No. I. on "rack rent."

Moreover, "Fishings" are charged under No. III., and as it cannot be denied that *net* profits must be the basis for "Fishings," which are included in the same Rule as Gasworks and Waterworks, it follows that "shootings" (which are strictly analogous to fishings) should be assessed on *net* profit. Rule 7 of No. II. charges "other profits from lands" and does not specify shootings, therefore it could be contended that shootings should be assessed under the same rule as fishings within the sweeping words in such rule "and other concerns of the like nature."

Woodlands and Lakes are also assessable.

Machinery.

The rating law of machinery is adopted in Income Tax practice, and it provides that "whatever is fixed to the realty, so as to pass as landlord's fixtures in a demise of the premises, is to be included for the purposes of ascertaining its rateable value."

Sewers and Slaughterhouses. Railway Property.

The assessability of sewers and slaughterhouses is dealt with at p. 313, and railway property at p. 33.

(*f*) 6 A. C. 315; 51 L. J. Q. B. 626; 45 L. T. 145; 29 W. R. 717; 1 Tax Cas. 287.

PERSONS ASSESSED.

Occupier.—Schedule A assessments are, apart from the exceptions hereafter, made on the occupier, who, if a tenant, is entitled to deduct the tax on paying his rent, but he is restricted to the deduction of a sum not exceeding the tax paid. Thus, if premises are rented at £100 per annum and the Schedule A assessment is on £100 gross and £83 6*s.* net, *i.e.* after deduction of one-sixth for repairs, the tenant could deduct the whole of the tax, but if he had a beneficial occupation and, with the same assessment, paid a rent of £50, he could not deduct tax exceeding that on £50 and he would have to bear the balance himself (but see p. 33).

A house which is owned by the Government and occupied by an official by virtue of his office or otherwise (except apartments in the Royal Palace) is assessable under Schedule A on the occupier.

Landlord.—Rule 8 of No. VII. of Schedule A in the Income Tax Act, 1918, enacts that the assessment shall be on the landlord for :—

> (*a*) Any dwelling-house in the occupation of a tenant which with the buildings or offices belonging thereto, and the land occupied therewith, is of less annual value than ten pounds, and (*b*) any lands and tenements which are let for a period less than one year. The tax may be recovered from the occupiers, on the landlord not paying.

Houses let in different apartments or tenements and occupied by two or more persons severally are assessed as one house on the landlord, but this does not preclude the tax being levied on the occupiers, on the owners defaulting in payment.

The landlord may himself elect to be assessed under Schedule A on giving notice to the Clerk to Commissioners on or before 31st July in any year, but this does not prejudice the right of the Revenue, if necessary, to collect the tax from the tenants, who may deduct the tax thus paid from *any* subse-

quent payment of rent (Rule 9 of No. VII. of Schedule A and Rule 10 of No. VIII.).

Railway Companies are not charged on their property under Number 1 of Schedule A (see p. 16) except for property rented by such companies, let to tenants, hotels, and refreshment rooms, whether in the occupation of tenants or not, and station masters' houses or rooms at stations if a rent is paid for them.

DEDUCTIONS OF TAX.

The occupier has a statutory right to deduct tax from his *next* payment of rent made after paying the tax, which right is also limited to the amount of the tax actually paid and which accrued due during the period for which the rent is paid. No deduction can legally be made until the tax has been paid, but in practice deduction is made from each payment of rent, such *e.g.* as quarterly (Rule 1 of No. VIII. of Schedule A).

Since the Finance Act, 1894, introduced an allowance for repairs the question of deduction has become somewhat complicated. Prior to that Act a tenant having a beneficial occupation deducted tax on the amount of his rent and bore the balance himself. Thus if the Schedule A assessment was £100 and the rent £80 the tenant bore tax on £20 and the owner on £80 and in practice this method still pertains although it produces considerable inequity. The Finance Act, 1894, had the obvious intention of relieving the landlord who had to execute repairs, and where the tenant has no beneficial occupation the landlord receives this intended benefit, as *e.g.* with a rental of £100, a gross Schedule A assessment of £100, and a net Schedule A assessment (after deducting one-sixth for repairs) of £83 6*s.*, the tenant on paying his rent deducts, and the landlord bears, tax on £83 6*s.*, but, assuming the same assessment and a beneficial occupation with a rent of £80, tax is in practice deducted on £80, thus giving the landlord no allowance for repairs. If the property is worth £100 per

annum the landlord is, from an equitable point of view, entitled to the allowance of one-sixth, but the 1894 Act did not contain a provision to authorize this. Rule 9 of No. IV. of Schedule A in the 1842 Act allows deduction on the rent payable, "all sums allowed by the Commissioners being first deducted," but the repairs enacted by the subsequent Act of 1894 were obviously not in the contemplation of Rule 9.

Compensation Levy.—Under sec. 3 of the Licensing Act, 1904, a licence holder is entitled to deduct from his rent a proportion of the amount paid by him as Compensation Levy. The deduction for Schedule A tax may, however, be made in respect of the whole rent: *Hancock* v. *Gillard*, [1907] (*g*).

Sublets.—Where property is not held from the actual owner direct, the tenant in possession deducts the full tax, or tax on the amount of his rent if this is smaller, when paying his rent to the lessee, who, when paying his rent (which would probably be smaller than the rent he receives), deducts from the landlord on the rent he pays to the latter.

Deduction from next Payment of Rent.—Section 211 of the Income Tax Act, 1918, enacts:—

> (1) Where in any year of assessment any half-yearly or quarterly payments have been made on account of any interest, dividends, or other annual profits or gains, previously to the passing of the Act imposing the tax for that year, and tax has not been charged thereon or deducted therefrom, or has not been charged thereon or deducted therefrom at the rate ultimately charged for the said year, the amount not so charged or deducted shall be charged under Schedule D in respect of those payments, as profits or gains not charged by virtue of any other Schedule under Case VI. of Schedule D, and the agents entrusted with the payment of the interest, dividends, or other annual profits or gains shall furnish to the Commissioners of Inland Revenue a list containing the names and addresses of the persons to whom payments have been made and the amount of those payments upon requisition made by those Commissioners in that behalf.
>
> (2) Any person liable to pay any rent, interest or annuity, or to make any other annual payment, shall be authorized to make any deduction on account of tax for any year of assessment

(*g*) 1 K. B. 47; 76 L. J. K. B. 20; 95 L. T. 680; 71 J. P. 9; 23 T. L. R. 12.

which he has failed to make previously to the passing of the Act imposing the tax for that year, or to make up any deficiency in any such deduction which has been so made, on the occasion of the next payment of the rent, interest, or annuity, or making of the other annual payment after the passing of the Act so imposing the tax, in addition to any other deduction which he may be by law authorized to make, and shall also be entitled, if there is no future payment from which the deduction may be made, to recover the sum which might have been deducted as if it were a debt due from the person as against whom the deduction could originally have been made if the Act imposing tax for the year had been in force.

The above section does not permit an unqualified deduction of tax, irrespective of when the tax was paid by the tenant. It does not supersede Rule 1 to No. VIII. of Schedule A, which provides that the deduction shall be made from the "first payment" made *after payment* of the tax. The section has in view solely the circumstances arising on rent being paid in the interval between the commencement of the tax year and the passing of the annual Finance Act.

The question also arose in *re Sturmey Motors, Ltd.*, [1913] (*h*). Certain premises were demised in 1907 to a company, and the latter did not pay any rent, but paid the Schedule A tax. In 1911 a Receiver was appointed. The lessor subsequently threatened to distrain for the rent in arrear, but the Receiver contracted to pay an occupation rent, and also the arrears, out of a particular fund. He paid a year's Schedule A tax, but did not deduct anything from the next payment of rent. It was held that the joint effect of Rule 9 and sec. 40 of the 1853 Act (now Rules 1 and 2 of No. VIII. of Schedule A), was to treat the payment of tax as a *pro tanto* payment of rent, and, further, that the Receiver was entitled to deduct the payments of tax made by the Company and himself from any future payments of rent to be made by him under his undertaking.

This case, however, is not conclusive on the question, as it was not that of an ordinary lessor and lessee, and it cannot be taken that the specific words of Rule 9, "which deduction

(*h*) 1 Ch. 16; 82 L. J. Ch. 68; 107 L. T. 523; 57 Sol. Jo. 44.

shall be made out of the first payment thereafter to be made on account of rent," are rendered inoperative. Moreover, in *Cumming* v. *Bedborough* (1846) (*i*), it was specifically decided that tax paid by a tenant cannot be deducted if the tenant omits to deduct from his next payment of rent.

See also *In re Hayman, Christy and Lilley, Ltd.* (1917) (*k*), which followed the *Sturmey* case.

It has been held in *inter alia* the following cases that tax can only be recovered from the *next* payment made after paying the rent: *Beaufort* v. *I. R.* (1913) (*l*); *Barnes* v. *Kiffin* (1916) (*m*); *Hill and Another* v. *Kirshenstein and Others* (1920) (*n*); *Yates* v. *Perier* (1921) (unreported).

See also *N. London and General Property Co., Ltd.* v. *Moy, Ltd.* (1918) (*o*), and *Kirk* v. *Cunnington* (1921) (*p*). As regards rent of property deduction is restricted to the *tax actually paid* by the tenant. In *Shrewsbury* v. *Shrewsbury* (1906), under a separation agreement an annual allowance was made clear of all deductions, and it was held that Income tax could be deducted from payments, but not in respect of past payments from which deduction was not made although, on payment of arrears of allowance, tax could be deducted on those arrears.

Rule 22 of Rules to all Schedules in the 1918 Act, allows the Commissioners to settle any dispute between landlord and tenant on the question of deduction of tax, and Rule 23 imposes a penalty of £50 for a refusal to allow deduction, and provides that an agreement to pay any rent or interest in full without deduction of tax is void (*i.e.* the provision is void, not the agreement as a whole).

See pp. 388–396.

Scotland.—Under Rule 1 of No. VIII. of Schedule A, deduction of tax under Schedule A on lands and heritages in

(*i*) 15 M. & W. 438.
(*k*) 1 Ch. 545; 86 L. J. Ch. 389; 116 L. T. 467.
(*l*) 3 K. B. 48; 82 L. J. K. B. 865; 108 L. T. 902.
(*m*) W. N. 166; 32 T. L. R. 381.
(*n*) 123 L. T. 766.
(*o*) 2 K. B. 439; 87 L. J. K. B. 986.
(*p*) 125 L. T. 831

Scotland made from "any rent due for the period ending on 15th May, shall be made at the rate of tax in force at the commencement of that period." Ordinary rent, etc., would carry deduction at the rates in force during the period of accrual (see p. 392).

Contracting-Out.—An agreement as to the tenant not being allowed to deduct tax is illegal (*ante*).

(See also pp. 388–396.)

VOIDS.

An allowance is made for Voids by Rule 4 of No. VII. of Schedule A, and claims have been admitted for repayment in respect thereof for the preceding three years.

In the case of cottage property, the assessment under Schedule A may, in practice, be ignored, and tax paid on the actual recoverable rents received in the calendar year less rates, and the further deduction for repairs.

Sec. 204 of the Income Tax Act, 1918, provides that, where the landlord has paid the tax, and any part of the rent has been lost through, *e.g.* insolvency of the tenant, tax on the lost rent may be repaid.

EXEMPTION.

For exemptions from Schedule A, see p. 398.

NUMBER II. OF SCHEDULE A.

The following subject-matters of assessment are charged under Number II. :—

Rule 1.—Tithes in kind on average amount of three preceding years.

Rule 2.—Dues and money payments in right of the Church or by Endowment, or in lieu of tithes (not being tithes arising from lands), and teinds arising in Scotland, on the same average.

Rule 3.—Of all tithes arising from lands, if compounded for, and of all rents and other money payments in lieu of tithes arising from lands (except rent-charges confirmed under the Tithe Act, 1836), on the amount of such composition, rent or payment for one year preceding after deducting parochial rates.

For the assessment of Tithe Rent-charge, see p. 28.

Rule 5.—Manors and other royalties, including all dues and other services, or other casual profits (not being rents or other annual payments reserved or charged), on an average of the seven preceding years, to be charged on the lord of such manor or royalty or person renting the same. Fines on admission to copyhold are charged under this rule.

In *Duke of Norfolk* v. *Lamarque* (1890) (*q*), it was decided that a deduction for expenses of collection of manorial dues could not be made by the Lord of the Manor.

Rule 6.—All fines received in consideration of any demise of lands or tenements (not being parcel of a manor or royalty demisable by the custom thereof) on the amount so received within the preceding year; provided that in case the party chargeable shall prove, to the satisfaction of the Commissioners for general purposes in the district, that such fines, or any part thereof, have been applied as productive capital, on which a profit has arisen, or will arise, which is otherwise chargeable for the year for which the assessment is made, it shall be lawful for the said Commissioners to discharge the amount so applied from the profits liable to assessment under this rule.

(*a*) In *Lord Mostyn* v. *London*, [1895] (*r*) it was decided that fines on renewal of leases, placed on deposit at a bank (on which deposit interest was paid) had not been applied as productive capital within the meaning of Rule 6. *Wright, J.*, stated that "I think those words, read fairly according to the ordinary use of language, imply something more than a mere temporary deposit at a bank."

Rule 7.—This is a sweeping clause on "all other profits, not before enumerated (other than profits liable to deduction in pursuance of rules 1 and 4 of No. VIII. of this Schedule) arising from lands, tenements, hereditaments, or heritages, not

(*q*) 24 Q. B. D. 485; 54 J. P. 327; 59 L. J. Q. B. 119; 62 L. T. 153; 38 W. R. 382; 2 Tax Cas. 579.

(*r*) 1 Q. B. 170; 59 J. P. 390; 64 L. J. Q. B. 106; 71 L. T. 760; 43 W. R. 330; 15 R. 49; 3 Tax Cas. 294.

being in the actual *possession or occupation* of the party to be charged, the annual value shall be understood to be the average amount for one year of the profits of the number of years which, on the statement of the person to be charged, appears to the Commissioners to be fair and equitable. Tax shall be assessed and charged on the receivers of such profits, or the persons entitled thereto."

Minerals.—In *Hill* v. *Gregory*, [1912] (*s*) the appellant leased the minerals under an area of land to the Warwickshire Coal Co., Ltd., and the surface to an ordinary farming tenant. The Coal Company were to pay a minimum rent of £60 per annum for the first four years of the lease. The minerals were not worked or entered upon, but boreholes had been put down by the Company on neighbouring property. The Company deducted tax when paying the minimum rent, but did not pay over the tax to the Crown on the contention that the rent was paid wholly out of income already taxed on its own freehold lands under Schedule A. It was held that the minimum rent was assessable under Rule 6 (Rule 7 in the 1918 Act).

NUMBER III.

This number, which deals with mines, waterworks and other trading concerns, is dealt with in Chapter III., on Schedule D, the rules of which are, with certain exceptions, applicable to No. III. This No. in its separation from Schedule D is a survival of the antiquated provisions of the Income Tax Act, 1806, re-enacted in the 1842 Act, and then in the 1918 Act.

SCHEDULE B.

The Tax under Schedule B is that which covers farmers and other *occupiers* of land. It is levied on the occupier and is imposed as an estimated amount of the profits derived from the occupation of the land, with provisions for the taxpayer to correct such estimate in the event of the actual profits falling short of the amount assessed but with no provision authorizing

(*s*) 2 K. B. 61; 81 L. J. K. B. 730; 106 L. T. 603; 6 Tax Cas. 39.

the Crown to exceed the estimated amount assessed, should it be known that the profits exceed that amount. The taxpayer is also possessed of an option of requiring the assessment on the profits derived from the land, to be made under the rules of Schedule D, if he occupies the land for the purpose of husbandry only and makes his request to the Inspector of Taxes within two calendar months after the commencement of the year of assessment. The rule for assessment under Schedule B is contained in Rule 1 of Schedule B in the 1918 Act, and reads as follows :—

> Tax under this Schedule shall be charged in addition to the tax to be charged under Schedule (A) on all the properties in this Act directed to be charged to the said tax, according to the general rule of Number I. of Schedule (A).
>
> Provided that there shall not be charged under this Schedule—
>
> (*a*) any dwelling-house or the domestic offices thereunto belonging, unless occupied, by virtue of one and the same demise, together with a farm of lands, or with a farm of tithes, for the purpose of farming the same ; or (*b*) any warehouse or other building occupied for the purpose of carrying on a trade or profession.

The Schedule B Tax is not assessed on buildings except farm-houses let with farms, but, where the owner is also occupier, the farm-house value is excluded. Moreover, labourers' cottages held with farms or land are also excluded.

It was provided by sec. 26 of the Finance Act, 1896, that the Schedule B assessment should be made on one-third of the full assessment. The latter follows the *gross* Schedule A assessment except that the deduction made for tithe (see p. 28) in arriving at the Schedule A assessment is not made for the purposes of Schedule B. The Finance Act (No. 2), 1915, provided by sec. 22, that for 1915–16 and subsequent years, the Schedule B assessment should be taken as the full annual value.

By sec. 21 of the Finance Act, 1918, the basis became *double* the annual value, but single value applied where the lands were not occupied for the purposes of husbandry only or mainly so, unless the Board of Agriculture and Fisheries certified that the non-user for husbandry was unreasonable. Schedule B in

the Income Tax Act, 1918, continued these provisions, but, for 1922–23 onwards, sec. 23 of the Finance Act, 1922, alters the double value to single value, and the single value to one-third value.

Under Rule 5 of Schedule B, an occupier of lands *for the purposes of husbandry only* may claim to be assessed under Schedule D, as in the case of an ordinary trade, and the basis of assessment is the average profits of the three years preceding the year of assessment. The claim must be made to the Inspector before 7th June in *each* year of assessment.

See "Stallions," p. 307.

Ireland.—When either of the following factors is less than the Poor Law valuation, sec. 22 (1) of the Finance (No. 2) Act, 1915, provides that such factor shall determine the assessment under Schedule B.

1. Judicial rent under the Land Law (Ireland) Acts, or any of them.

2. Annual interest payable to Irish Land Commission in lieu of rent under the Land Purchase (Ireland) Acts or any of them.

3. Purchase annuity payable under the Land Purchase (Ireland) Acts, or any of them.

Excessive Assessment.—It is provided by Rule 6 of Schedule B that :—

> If a person who occupies, either as owner or otherwise, any lands for the purposes of husbandry only, shows **at the end of any year of assessment,** to the satisfaction of the general commissioners that the profits or gains arising from that occupation **during that year** fell short of the assessable value of the lands under this Schedule, the income arising from that occupation shall be taken at the **actual amount** of those profits or gains, and if the whole of the income tax has been paid, the amount overpaid shall be certified and repaid.

The words "end of any year" are interpreted liberally in practice, and a claim will be admitted if made within twelve months of the end of the year of assessment for which the claim is made.

"During that year" refers to the trading year, thus if accounts are made up to 31st December in each year, such accounts would be accepted by the Commissioners.

Sec. 30 (3) of the Finance Act, 1923, substitutes twelve months for "end of the year."

This section does not apply to lands held as amenities to a residence.

For claims in respect of losses, see sec. 34 of the Income Tax Act, 1918, p. 373, which allows repayment of tax in respect of the amount of loss if the person assessed has paid tax on any income.

The following form of accounts should be rendered on a claim being made. A printed form may be obtained from the Inspector of Taxes :—

OFFICE OF THE INSPECTOR OF TAXES.
19 .

SIR,

With reference to your notice of Appeal for relief from the Income Tax charged under Schedule B in respect of the Lands occupied by you for the purposes of Husbandry, I have to request that you will be good enough to furnish the particulars required by this form, so far as it is applicable to your case, and return it to me **within ten days from this date.**

Particulars of the Lands to which your appeal relates should be entered in the Schedule on the back hereof.

I am, Sir,
Your obedient Servant,
H.M. Inspector of Taxes.

INCOME TAX.

Statement of Payments and Receipts in respect of Lands in my occupation for the purposes of Husbandry (particulars of which are entered at the back of this form) for the year ending 19 .

PAYMENTS :—

(*a*) Value of *Stock* (live and dead) and *produce* at beginning of year.
Live stock bought.
Corn and Seeds bought for seed.
Feeding Stuffs, Oil Cake, and Manure bought.
Rent [plus Tithe, if any, paid by Tenant in addition to Rent].
The amount of (*a*) the *Schedule A assessment* (*i.e.* the *net value* assessed, not the duty paid), and (*b*) Tithe paid, if the Occupier is also the owner (*a*) (*b*).

(*a*) This is value of *Stock* and *produce* only—not including "*tillages*," &c.

(*b*) Disbursements or Expenses for the maintenance of the Occupier of the Lands or of his family are not to be included.

Rates, Taxes (excluding Income Tax), and Insurance of Farm Stock.
Labour on the Farm.
(*b*) Tradesmen's accounts for Goods supplied or work done *upon the Farm.*
(*b*) Sundries.

RECEIPTS :—

Live Stock and Wool sold.
Corn and Seeds sold.
Dairy Produce and Poultry sold.
Other Produce, including Hay, Straw, or Roots sold.
Labour, Stock, Implements, etc., hired out.
Taking in Sheep or Cattle to graze.
(*a*) Value of *Stock* (live and dead) and *produce* at end of year.

OTHER RECEIPTS, viz. :—

Value of Farm Produce used by Household.

Signature.
Address.
Date.

FORM OF DECLARATION TO BE FILLED UP AND SIGNED

when the value of the Stock at the beginning and end of the year cannot be shown in the above Account.

I solemnly and sincerely declare that the amount of live and dead *stock* and *produce* (*a*) upon my holding on (*c*) the day of 19 , did not differ materially for the purposes of this account from the average amount in hand on the corresponding day of previous years [(*d*) except in the particulars stated below, which are true to the best of my knowledge and belief].

Particulars of difference referred to above.

Description of Stock and produce.
Increase, £
Decrease, £

Signature,
Date, 19 .

(*a*) This is value of *Stock* and *produce* only—not including "*tillages*," &c.
(*c*) Name the day to which accounts are made up.
(*d*) Strike out the words in brackets if the amount is the average one.

PARTICULARS OF THE LANDS TO WHICH THE APPEAL RELATES.

Parish.
Occupier.
Owner.
Name or situation of the Farm.
Acreage—Arable, Pasture.
Full amount of the Rent payable (including Tithe).
Amount of Rent remitted by the Landlord for the year to which the Appeal relates.
Annual Value charged under Schedule A where the Occupier is also the Owner.

Appellant.

Nurseries and Market Gardens are to be assessed under the rules of Schedule D (*i.e.* on the profits made), but the amount thus arrived at is to be inserted under Schedule B.

See "Cattle Dealers," p. 150.

EARNED INCOME, &C.

The Schedule B tax being on *profits* is subject to the provisions applicable to "earned" income. (See p. 342.)

OMISSIONS.

Additional assessments may, under sec. 125 of the Income Tax Act, 1918, be made on lands under-assessed or omitted from assessment, in respect of the current tax year and the three preceding years. See p. 330 for 1920–21 onwards.

SPORTING RIGHTS.

Assessments under Schedule B on all lands to which any rights of sporting are attached, should be made on the full annual value inclusive of such sporting rights except in the following cases :—

(1) If the land is let to one person, and the rights of sporting thereover are let to another person, the land should be assessed under Schedules A and B upon the occupier, and the sporting rights under Schedule A only upon the owner.

(2) If the land is let, and the sporting rights attached thereto are not let, no assessment is to be made in respect of the sporting rights.

See *Middleton* v. *I. R.* (1876) (*e*), where it was held that the rent paid for deer shooting should be included in the Schedule B assessment on the occupier.

In *Revell* v. *Scott* (1895) (*f*), it was decided that the Schedule B assessment should cover shooting and fishing rights.

WOODLANDS AND LAKES.

Woodlands and lakes, whether in the occupation of the owner or of a tenant, are chargeable, like other lands, under Schedule B on their full annual value in the existing conditions, but Rule 7 of Schedule B provides that, on proof that the occupier manages the woodlands "*on a commercial basis, and with a view to the realization of profits,*" he may elect to be charged under Schedule D, subject to the following restrictions :—

(1) All woodlands in the same estate shall be included ; but woodlands which are or have been planted or replanted since 19th July, 1916, shall be treated as woodlands on a separate estate if the occupier gives notice to the Commissioners within *a year* of planting or replanting. Section 23 of the Finance Act, 1922, substitutes 10 *years* for a year, for 1922–23 onwards.

(2) The assessment under Schedule D shall attach for all subsequent years so long as the woodlands are in the same occupation.

(*e*) 13 Sc. L. R. 378 ; 3 R. 599 ; 1 Tax Cas. 109.
(*f*) 32 Sc. L. R. 585 ; 22 R. 772 ; 3 Tax Cas. 403.

CHAPTER III

SCHEDULE D

SCHEDULE D is the main Schedule of the Income Tax and covers *inter alia* assessment on profits of trade. Its provisions with regard to deductible expenses (p. 82) form the most controversial part of the incidence of the Income Tax, and the law pertaining thereto is particularly inequitable, but the practice alleviates much of such inequity. Profits for Income Tax purposes are not, in practice, synonymous with profits as understood in an ordinary commercial sense, as many expenses which a prudent business man would incur are not allowed in arriving at the assessable Income Tax profit. The practice, however, is far more liberal than the law, and many expenses which from a strictly legal point of view cannot be admitted are, in practice, allowed *if claimed*. (See p. 82.)

Profits which are not Chargeable.—Income Tax is not chargeable on profits of a casual nature. If a person realizes property or shares he is not assessable on the profit, however large it may be or however frequently it may arise. No tax is payable in respect of profits accruing from repeated speculations provided that the speculations do not constitute a business or are not connected with the taxpayer's business. In *I. R.* v. *Sangster* (1920) (*a*) it was laid down that *habitual transactions* are necessary in order to constitute a trade or business. In *Beynon* v. *Ogg* (1918) (*b*) a company of agents for sale of wagons bought some wagons on their own account, and it was held that there was liability as the wagons were purchased with an *intention of sale at a profit*. This intention is a requisite factor to give liability and distinguishes between

(*a*) 1 K. B. 587.
(*b*) 7 Tax Cas. 125.

a trading transaction and the realization of an investment. In *Beynon's* case the transaction was "casual," but the articles dealt in were connected with their ordinary business. (See also *Cape Brandy Syndicate* v. *I. R.* (1921) (*c*), and *Guinness Son & Co.* v. *I. R.* (1923).

In the Report of the Royal Commission on the Income Tax (1920) the question of Casual Profits was dealt with in sec. 8, paras. 84 to 94. The report calls attention to the law charging the *annual* profits, and states that the "use of the term 'annual profits' in the charging words of Schedule D has had, in general, the effect of excluding from Income Tax liability all profits that are not annual profits in the sense of being likely to recur annually. Casual, non-recurring, or occasional profits arising from transactions that do not form part of the ordinary business of the person who makes them are accordingly held not to be within the scope of the Income Tax, and consequently escape taxation." The report proceeds to say that there are many categories of transactions giving profits which, to the ordinary mind, seem eminently proper subjects for Income Tax but are not "annual" profits, even though a person may deliberately set out to make a profit. A speculative builder who erects property with no intention of retaining it, but for the purpose of selling, is chargeable on the profits arising from such sales. (See also p. 141.)

See *Cohan* v. *I. R.* (1923) *re* Sale of Ship, and *Ryall* v. *Hoare* (1923) *re* Commission.

Profits which are Chargeable.—The tax under Schedule D is levied under six Cases, the first three of which have certain applicable Rules. The subject-matters of the Cases—which are contained in Schedule D of the Income Tax Act, 1918—are as follows :—

Case 1.—Profits of trade.

Case 2.—Professions or vocations.

Case 3.—Profits of an uncertain annual value not charged under Schedule A, as *e.g.* bank deposit interest and War Loan interest.

(*c*) 125 L. T. 108.

Case 4.—Foreign and Colonial securities.

Case 5.—Foreign and Colonial possessions.

Case 6.—Sweeping clause.

The existing Schedule of Charge is contained in No. I. of Schedule D :—

SCHEDULE D.

Tax under this Schedule shall be charged in respect of—

(*a*) the **annual** profits or gains arising or accruing—

(i) To any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere ; and

(ii) To any person residing in the United Kingdom from any trade, profession, employment or vocation, whether the same be respectively carried on in the United Kingdom or elsewhere ; and

(iii) To any person, whether a British subject or not, although not resident in the United Kingdom, from any property whatever in the United Kingdom, or from any trade, profession, employment or vocation exercised within the United Kingdom ; and

(*b*) All interest of money, annuities, and other annual profits or gains not charged under Schedule A, B, C, or E, and not specially exempted from tax.

The word "trade" in Schedule D is defined by sec. 237 of the Income Tax Act, 1918, as including every trade, manufacture or concern in the nature of trade not contained in any other Schedule.

CASE 1.

This case which covers "every trade carried on in the United Kingdom or elsewhere," contains the rules for assessment of practically all business undertakings, but excludes mines, gasworks, railways, waterworks and other concerns charged under No. III. of Schedule A (p. 56).

The Rule to Case 1 provides that the tax—

Shall be computed on the full amount of the balance of the profits or gains upon a fair and just *average of three years*, ending on that day of the year immediately preceding the year of assessment on which the accounts of the said trade have been usually made up, or on the fifth day of April preceding the year of assessment.

Rule 1 (2) to Cases 1 and 2 provides that—

> Where the trade, profession, employment or vocation has been **set up and commenced** within the said period of three years, the computation shall be made on the average of the profits or gains for one year from the period of the first setting up of the same, and where it has been **set up and commenced** within the year of assessment, the computation shall be made according to the rules applicable to Case 6.

Income Tax Year.—The Income Tax year commences on the 6th April.

THE AVERAGE SYSTEM.

Assessments to Income Tax are, with a few exceptions, based on average profits, the basis varying from one year in the case of gasworks to the average profits of five years in the case of mines. Case 1 imposes an average of three years, and, if the accounts of a concern chargeable thereunder were made up to 30th September annually, the assessment for the year 1922–23 would be made on the average profits of the three years ended 30th September, 1921.

The average system is of benefit in the case of a business which is expanding and, conversely, is disadvantageous in the case of a declining business.

New Concerns.—In the case of a new concern the assessment for the first year usually stands over until the completion of the trading for the first year, the result of which forms the amount of assessment for the first year and the second year. For the third year the average of the first and second years' profit is adopted, and for the fourth year the full average of three years comes into operation.

Assume, *e.g.* that a new concern was commenced on 1st October, 1921, and that the accounts showed the following profits :—

	£
Year to 30th September, 1922 . . .	600
,, ,, ,, 1923 . . .	1000
,, ,, ,, 1924 . . .	2000
,, ,, ,, 1925 . . .	3000

The assessments would be arrived at as follows :—

1921–22.

This assessment and that of 1922–23 would await the preparation of the first year's accounts to 30th September, 1922. As the business commenced on 30th September there would be six months' trading in the year to 5th April, 1922, and the assessment would thus be :—

$\frac{1}{2}$ of £600 = £300.

1922–23 and 1923–24.

The first trading year to 30th September, 1922, would form the assessment, being £600.

1924–25.

	£
1922	600
1923	1000
	2)1600
Assessment . .	= £800

1925–26.

	£
1922	600
1923	1000
1924	2000
	3)3600
Assessment . .	= £1200

When the accounts are made up to irregular dates the average is arrived at as in the following actual example :—

The accounts furnished showed the following profits :—

	£
Year to 31st March, 1919	203
10 months to 31st January, 1920 . . .	120
4 ,, 28th May, 1920	13
19 ,, 31st December, 1921 . . .	238

The assessment for 1922–23 was arrived at by taking the average of the three years ending 31st December, 1921, as follows :—

	£
¼ of year to 31st March, 1919	50
10 months to 31st January, 1920 . . .	20
4 ,, 28th May, 1920	13
19 ,, 31st December, 1921 . . .	238
3 yrs.	3)321
	£107

(See " Commencement," p. 52.)

The conversion of a private partnership into a limited liability company has been held in *Ryhope Coal Company Limited* v. *Foyer* (1881) (*d*) not to constitute a business " set up and commenced " within the terms of Rule 1, but in such a case the breakage of the average, and, therefore, assessment as a new business, may be achieved under Rule 11 of Cases 1 and 2 of Schedule D (see p. 68), by proving that the profits have fallen short from a " specific cause."

Rule 11 enacts as follows :—

> If within the year of assessment or the period of average upon which the assessment is to be based a change occurs in a partnership of persons engaged in any trade or profession by reason of death, or of dissolution of the partnership as to all or any of the partners, or by the admission of a new partner, or if any person succeeds to a trade or profession, the tax payable in respect of the partnership, or any of the partners, or of the person so succeeding shall be computed according to the profits or gains of the trade or profession during the respective periods prescribed by this Act, notwithstanding the change or succession, unless the partners or the person succeeding to the trade or profession prove to the satisfaction of the Commissioners that the profits or gains **have fallen** or **will fall short** from some **specific cause,** to be alleged to them, since such change or succession took place, or by reason thereof.

(This rule is dealt with in detail at p. 68.)

For specific periods other than three years for calculating the amount of the assessable profit under No. III. of Schedule A (which is brought within the rules of Schedule D), see p. 57.

Two Undertakings. — In *Farrell* v. *The Sunderland*

(*d*) 7 Q. B. D. 485 ; 45 L. T. 404 ; 30 W. R. 87 ; 1 Tax Cas. 343. See *Burntisland Shipbuilding Co., Ltd.* v. *Weldhen* (1923), where a new company's first accounts were for ten and a half months to 31st March, 1919. The Court held that the 1919–20 assessment must have reference *solely* to the accounts to March, 1919.

Steamship Co., Ltd. (1903) (*e*), the Company owned and traded with one ship, and subsequently acquired $\frac{32}{64}$ths of another ship and claimed to be assessed in one sum on the average of the profits derived by the Company from the two ships. It was held that the second ship, being a concern carried on jointly by two or more persons, must be assessed separately.

(See also sec. 34 (p. 373) and Rule 13 of Cases 1 and 2 of Schedule D (p. 371)).

COMMENCEMENT.

New Businesses.—Since the passing of the Finance Act, 1907, a claim may be made in the case of a new business that the assessments for the first three years be so adjusted (by repayment of tax paid if necessary) that the actual assessments coincide with the actual profits, thus rendering the average system inoperative, in result, for the first three years of the existence of the business, but this provision does not affect the making of the assessments for each year, but merely acts as a subsequent adjustment thereof. The provision is contained in Rule 8 (1) to Cases 1 and 2 of Schedule D :—

> Where a person charged or chargeable with tax in respect of any trade, profession or vocation which has been set up or commenced within the period of three years upon the average of which the profits or gains are to be taken, or within the year of assessment, proves at the **end of the year of assessment** to the satisfaction of the Commissioners by whom the assessment has been or can be made that the actual profits or gains arising from the trade, profession or vocation in the year of assessment fall short of the profits or gains as computed in accordance with this Act, he shall be entitled to be charged on the actual amount of the profits or gains so arising instead of on the amount of the profit or gains so computed, and, if he has paid the full amount of the tax on the profits or gains so computed, he shall be entitled to repayment of the amount overpaid.

"End of year of assessment" means within a reasonable time thereof. See *Rex* v. *Special Commissioners ex parte Cape Copper Mining Co.* (1888), C. A. (*f*). Sec. 30 (3) of the Finance Act, 1923 allows one year from the end of the year of assessment.

(*e*) 67 J. P. 209 ; 88 L. T. 741 ; 9 Asp. M. L. C. 416 ; 4 Tax Cas. 605.
(*f*) 21 Q. B. D. 313 ; 53 J. P. 84 ; 57 L. J. Q. B. 513 ; 59 L. T. 455 ; 36 W. R. 776 ; 2 Tax Cas. 332, 347.

The working of this subsection is shown below, the profits being assumed as under, and the commencement of trading to have been 1st January, 1922.

	£
Year to 31st December, 1922	4000
,, ,, ,, 1923	3000
,, ,, ,, 1924	2000
,, ,, ,, 1925	800

ASSESSMENTS.

1921–22.

$\frac{1}{4}$ (*i.e.* from 1st January to 5th April, 1922) of £4000 = £1000

1922–23.

1922 . . . . £4000

1923–24.

1922 . . . . £4000

1924–25.

	£
1922	4000
1923	3000
	2)7000
	£3500

The assessments (*a*) and profits (*b*) are thus as follows :—

	(*a*) £	(*b*) £	Repayments. £
1921–22 . .	1,000	1,000	
1922–23 . .	4,000	4,000	
1923–24 . .	4,000	3,000	1000
1924–25 . .	3,500	2,000	1500
	£12,500	£10,000	£2500

Repayment would, therefore, be claimed in 1923–24 and 1924–25.

In *The Steamship "Glensloy" Co., Ltd.* v. *Lethem* (1914) (*g*).

(*g*) 51 Sc. L. R. 471 ; 6 Tax Cas. 453.

the company acquired one ship, and commenced to trade in September, 1911, and the first accounts were made up to 20th November, 1912, being for a period of one year sixty-nine days. The 1912–13 assessment was made on one year's proportion of the profits shown by those accounts. The company contended that this method was incorrect, as the accounts were for a period ending after 5th April, 1912, and, therefore, not within Rule 1 (p. 48), and that the profits of two voyages ended on 25th July, 1912, should be followed. It was held that the assessment was correctly made. The LORD PRESIDENT stated that the provision of Rule 1 that when the trade has been set up within three years " the computation shall be made for one year on the average of the profits or gains from the *period* of first setting up the same " applied, and that it was necessary to determine when that period ended. He then ruled that the first setting up is equivalent to the commencement of the trader's first trading and profit and loss account, while the end of the period is the end of that account, and that the company's contention that the year of assessment must not be encroached upon was insupportable. LORD MACKENZIE concurred, and held that the first account is the basis, and that if that account ended prior to the commencement of the year of assessment that account would still have to be taken. But his lordship pointed out that if this latter position were adopted by companies the legislature would be capable of dealing with the matter.

See also *Birmingham and District Cattle By Product Co.* v. *I.R.*

DISCONTINUANCE.

Rule 8 (2) of Cases 1 and 2 of Schedule D contains the following provision as to discontinuance, similar in effect to that on Commencement (*ante*) :—

> Where a trade, profession or vocation is discontinued in any year, any person charged or chargeable with tax in respect thereof, shall be entitled to be charged on the actual amount of the profits or gains arising therefrom in that year, and shall also, if he proves to the satisfaction of the Commissioners by whom the assessment has been or could have been made, that

the total amount of the tax paid for the three previous years in respect of that trade, profession or vocation exceeds the total amount which would have been paid if he had been assessed for each of those years on the actual amount of the profits or gains arising in each year, be entitled to repayment of the excess.

The claim is accepted if made within three years of the 5th April preceding discontinuance.

Assume that a business is discontinued on 30th September, 1922, and that the profits have been as follows :—

	£
Year to 31st December, 1916 . . .	8000
,, ,, ,, 1917 . . .	7000
,, ,, ,, 1918 . . .	5000
,, ,, ,, 1919 . . .	3000
,, ,, ,, 1920 . . .	3000
,, ,, ,, 1921 . . .	2000
9 months 30th September, 1922 . . .	500

The assessments would be as under for the years subject to repayment :—

1919–20.

	£
1916 . . .	8,000
1917 . . .	7,000
1918 . . .	5,000
	3)20,000
	£6,666

1920–21.

	£
1917 . . .	7,000
1918 . . .	5,000
1919 . . .	3,000
	3)15,000
	£5,000

1921–22.

	£
1918 . . .	5,000
1919 . . .	3,000
1920 . . .	3,000
	3)11,000
	£3666

1922–23.

	£
1919 . . .	3,000
1920 . . .	3,000
1921 . . .	2,000
	3)8,000

5th April to 30th September = ½ of £2,666 = £1,333

The claim for commencement has to be made year by year, but that for discontinuance is a claim *en bloc*. The assessments (*a*) and profits (*b*) would, therefore, be as follows :—

	(*a*) £	(*b*) £	
1919–20 . . .	6,666	3000	
1920–21 . . .	5,000	3000	
1921–22 . . .	3,666	2000	
1922–23 . . .	1,333	333	(⅔ of £500)
	16,665	8333	
	8,333		
	£8,332 = repayment figure.		

No. III. of Schedule A.—The Income Tax Act of 1842 (now in the Income Tax Act, 1918), which was reprinted from that of 1806, continued an anomaly in reintroducing a distinction between the assessment of ordinary trading concerns and certain trading concerns having an intimate working connexion with land ; such as mines, waterworks, way-leaves, etc. These excepted undertakings, instead of being included under Schedule D, are placed in No. III. of Schedule A, but the principles of assessment between the two classes of concerns do not differ materially since the passing of the Revenue Act, 1866.

Each of the Income Tax Schedules is complete in itself, having its own rules of assessment.

No. III. enacts as follows :—

> Rules for estimating the annual value of certain Lands, Tenements, Hereditaments, or Heritages which are not to be

charged according to the preceding general Rule (*i.e.* No. 1 of Schedule A, p. 16).

1. In the case of quarries of stone, slate, limestone, or chalk, the annual value shall be understood to be the profits of the preceding year:

2. In the case of mines of coal, tin, lead, copper, mundic, iron, and other mines, the annual value shall be understood to be the average amount for one year of the profits of the five preceding years. Provided that—

(*a*) If any such mine has, from some unavoidable cause, so decreased and is so decreasing in annual value that an average of five years will not give a fair estimate thereof, the general commissioners of the division in which the mine is situate may, on proof thereof, compute the annual value on the actual amount of profits in the last preceding year subject to such abatement on account of diminution of duty within the current year as is in this Act provided in other cases; and

(*b*) If any such mine has, from some unavoidable cause, wholly failed, the commissioners may, on due proof thereof, discharge the assessment.

3. In the case of ironworks (*h*), gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains, or levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries and other concerns of the like nature, having profits from or arising out of any lands, tenements, hereditaments, or heritages, the annual value shall be understood to be the profits of the year preceding:

Rule 4 provides that tax under Rules 1 to 3 shall be charged on the person or body of persons carrying on the concern, or on the agents or other officers who have the direction or management of the concern or receive the profits thereof, and Rule 5 charges on the value of the produce of the concern before any distribution to any person entitled to any share thereof, or to the owner of the soil or property, or to any creditor or other person whatever who has a claim on the profits, and every such person shall allow a proportionate deduction of the tax charged.

(The details of assessment of the above-mentioned concerns are dealt with in the alphabetical list of "Deductible Expenses and Subjects of Assessment," commencing at p. 95.)

Rule 8 of No. III. of Schedule A (previously sec. 8 of the Revenue Act, 1866, brought the concerns in Rules 1,

(*h*) Ironworks refer to raw material, not to manufactured iron goods.

2, and 3 within a qualified scope of Schedule D by enacting that :—

> The properties described in Rules 1, 2 and 3 shall be assessed and charged in the manner herein mentioned according to the rules applicable to Schedule D **so far as the same are consistent with the rules of this Number.**

This provision has been extensively discussed in the Courts, and a decision in the case of *Knowles* v. *McAdam* (1877) (*i*), that the provision transferred the concerns in No. III. of Schedule A bodily to Schedule D and thereby introduced the three years' average, was subsequently overruled in *Coltness Iron Co.* v. *Black* (1881) (*k*), (H. L.) where it was held that such alteration was not "either intended or expressed."

The true effect of Rule 8 is that the concerns under No. III. of Schedule A are to be assessed under such of the rules of Schedule D as do not contain provisions which would operate in opposition to provisions of Schedule A on similar points.

Thus the average for a mine is given in Schedule A as five years, and an average of three years is specified in Schedule D, therefore, as these specified periods are inconsistent with each other, the Schedule D provision as to period of average is inapplicable to Schedule A. Similarly, Schedule A has a provision in regard to setting off a loss on one mine against a profit on another mine (p. 276), while Schedule D has a similar provision in Rule 13 to Cases 1 and 2 (p. 371), therefore Rule 13 is also inconsistent with mines, and consequently inapplicable to the case of two mines. It appears from the 24th Report of the Board of Inland Revenue, p. 78, that sec. 8 was passed to extend to mines the option of assessment by Special Commissioners instead of District Commissioners, an option operative in regard to Schedule D by sec. 131 of the 1842 Act, which enacted that "it shall be lawful for any person chargeable to the duties contained in the said Schedule D, . . . to require,

(*i*) 3 Ex. D. 23 ; 47 L. J. Ex. 139 ; 37 L. T. 795 ; 26 W. R. 114 ; 1 Tax Cas. 161.

(*k*) 6 App. Cas. 315 ; 46 J. P. 20 ; 51 L. J. Q. B. 626 ; 45 L. T 145 ; 29 W. R. 717 ; 1 Tax Cas. 287.

if he shall think fit, that all proceedings in order to an assessment upon him, in respect of profits and gains chargeable under the said Schedule shall be had and taken before the Commissioners for special purposes." Sec. 123 of the Income Tax Act, 1918, replaced sec. 131.

Rule 8, however, goes much further than the introduction of the option of assessment by the Special Commissioners, and the words "so far as the same are consistent with the Rules of this Number" can only bear the wide interpretation of making all the Schedule D Rules applicable, except those which would alter existing Schedule A Rules, and those which are physically incapable of application. This contention is strengthened by sec. 208 of the Income Tax Act, 1918.

> The **provisions** in this Act contained, which are applied to the tax under any particular Schedule, shall if also applicable to the tax under any other Schedule, and not repugnant to the **provisions** for ascertaining, charging or levying the tax under such other Schedule, be applied in ascertaining, charging or levying tax under that Schedule as if the application of those provisions thereto had been **expressly and particularly directed.**

Two conditions have to be fulfilled in the above section: (*a*) that the rules of Schedule D are applicable to No. III. of Schedule A, and (*b*) that they are not repugnant thereto. These conditions are practically coincident with the stipulation as to consistency in Rule 8 (*ante*), so that sec. 208 alone is sufficient to remove any material distinction between Schedule D and No. III. of Schedule A, a matter which is rendered less difficult by the fact that No. III. of Schedule A has practically no Rules of its own, the original intention of the legislation evidently being that sec. 208 should alone be sufficient.

The construction to be put upon sec. 208 was considered in *Tennant* v. *Smith* (1892) H.L. (*m*), where a question was raised as to a particular taxable item being alternatively liable

(*m*) A. C. 150; 56 J. P. 596; 61 L. J. P. C. 11; 66 L. T. 327; 3 Tax Cas. 158.

under Schedule D if it were not liable under Schedule E, and Lord Watson expressed the opinion that:

> "Assuming for the sake of argument, that the rules of assessment for employments and vocations under Schedule D differed in material respects from the rules for assessing public offices and employments under Schedule E, I do not think they would be applicable to cases falling under Schedule E, or could be applied without repugnancy."

The combined effect of Rule 8 and sec. 208 is sufficient to make all rules of Schedule D applicable to No. III. of Schedule A, where such rules would not create an alteration of the existing rules of Schedule A, therefore where Schedule D possesses a rule or part thereof on a point on which the rules of No. III. of Schedule A are silent, those rules of Schedule D are applicable to No. III. of Schedule A, provided that the nature of the concern in No. III. of Schedule A admits the operation of such rule of Schedule D.

In *Wakefield Rural District Council* v. *Hall*, [1912] C. A. (*n*), it was contended that waterworks (which are in No. III. of Schedule A) came by virtue of sec. 8 of the Revenue Act, 1866 (now Rule 8 (*ante*)), within Rule 13 to Cases 1 and 2 of Schedule D.

> A person who carries on, either solely or in partnership, two or more distinct trades **the profits of which are chargeable under the rules of this Schedule,** may deduct from or set off against the profits as computed under this Act in respect of one or more such trades, the loss so computed sustained in any other such trade, and may make separate statements as to each such trade.

It was held in the Divisional Court, and in the Court of Appeal, that sec. 101 of the 1842 Act was not a *rule* of Schedule D within the meaning of sec. 8 of the Revenue Act, 1866, and that sec. 101 could not be applied to waterworks. *There was, however, in that case no argument based on sec.* 188 *of the* 1842 *Act* which did not limit the applicability of Schedule D to *rules*, but admitted "every *provision*," and, as it could not be questioned

(*n*) 3 K. B. 328; 76 J. P. 437; 81 L. J. K. B. 1201; 107 L. T. 138; 28 T. L. R. 589; 10 L. G. R. 1002; 6 Tax Cas. 181.

that sec. 101 was a "provision," the difficulty could have been overcome by means of sec. 188 (see also reference to sec. 133, *post*). Sec. 101 is now a *Rule* of Schedule D, being Rule 13 to Cases 1 and 2.

The question was also dealt with in *Ryhope Coal Co.* v. *Foyer*, [1881] (*o*) which referred to Rule 11 to 1 and 2 cases of Schedule D. Lindley, J., stated:

> "By the 8th section of 29 Vict. c. 36, No. III. of Schedule A is not touched, but you must substitute Schedule D for the whole of No. IV., obeying the injunction that you must not make the substitution where it would be inconsistent with what is left of No. III. Therefore wherever an average of three years is given in Schedule D you must in the case of a mine read five, and with that basis you are to apply Schedule D" (see p. 69).

A case came before the Commissioners on sec. 134 of the 1842 Act (now Rule 3 of the Miscellaneous Rules of Schedule D), which allowed certain abatement to "any person charged to the said duties under Schedule D," who shall, *inter alia*, cease business, and it was contended that a mine did not come within the scope of the said section. The case was abandoned by the Inspector of Taxes on it being stated that the benefit of sec. 133 of the 1842 Act, was, prior to repeal of that section, extended, in practice, to mines. The corresponding words in the latter section were "any person charged to the duties contained in Schedule D," and, therefore, indistinguishable from sec. 134. That it was the intention of the legislature to apply sec. 133 to No. III. of Schedule A is apparent from Rule 2 of No. III. of Schedule A, which provides for mines that are failing, and allows the assessment to be computed on the profits of the preceding year, "subject to such abatement on account of diminution of duty within the current year as is in this Act provided in other cases." This refers to sec. 133, and the marginal note of sec. 133 read "abatement on account of diminution, etc." (See p. 276.)

See Mines, p. 276.

(*o*) 7 Q. B. D 485; 45 L. T. 404; 30 W. R. 87; 1 Tax Cas. 343.

See Chapter XI. and p. 236, as to exemptions of Friendly Societies, etc., from Schedule D.

Partnerships.—Assessments on partnerships are made in one sum on the total profits irrespective of the number of partners, and, on individual claims to exemption, or relief (see Chapter VI.), the assessment is in no way disturbed, but a division of the profits assessed is made in order to arrive at the income of each partner. Thus, if the Schedule D assessment is £1000 on a firm having three partners, A, B, and C, who share the profits in the proportions of $\frac{1}{2}$, $\frac{3}{8}$, and $\frac{1}{8}$ respectively, and claim relief, separate *assessments* would not be made on the three partners, but the Inspector of Taxes would allocate each partner's share, thus in the above example the income of A. would be taken as £500, B. £375, and C. £125.

The duties of making returns, &c., devolve on the precedent partner (rule 10 to 1st and 2nd cases). This rule also provides that any partner other than he who has made the return in accordance with the above provision may merely return his name and place of abode, and that he is such partner, unless the Commissioners require further particulars, but, owing to the necessity of returning total income from all sources for the purpose of relief, (p. 341) this latter provision is inoperative in practice.

In *Farrell* v. *The Sunderland Steamship Co., Ltd.* (1903), (*p*) the Company owned and traded with one ship, but subsequently acquired $\frac{59}{64}$ths of another ship, and claimed to be assessed in one sum on the average profits derived by the Company from the two ships. It was held, following *A. G.* v. *Borrodaile* (1814), (*q*) that the second ship is a concern carried on by two or more persons jointly within the meaning of Rule 10, and that the profits must be assessed separately.

See also p. 51.

See *Morden Rigg & Co.* v. *Monks* (1923).

CASE 2.

The second case is in respect of "professions, employments, or vocations," but sec. 18 of the Finance Act, 1922,

(*p*) 67 J. P. 209; 88 L. T. 741; 9 Asp. M. L. C. 416; 4 Tax Cas. 605.
(*q*) 1 Price, 148.

provides that profits from "an office, employment or pension" chargeable under Schedule D shall be charged under the rules of Schedule E for 1922–23 onwards (see p. 360).

Rule of Case 2.—The tax shall extend to every employment by retainer in any character whatever, whether such retainer shall be annual, or for a longer or shorter period; and to all profits and earnings of whatever value arising from employments, and shall be computed on the full amount of the balance of the profits, gains, and emoluments of the professions, employments or vocations upon a fair and just average of three years ending as in Case 1.

Rule 1 to Cases 1 and 2 of Schedule D provides for the charging of professions, employments or vocations commenced within the three years' average (p. 49). The transfer of employments to Schedule E (*ante*) gives assessment on the profits of the year of assessment for employments.

Bookmakers.—In *Partridge* v. *Mallandaine* (1886) (*r*), it was held that a person who attends races and systematically bets is liable in respect of the profits he derives from the vocation of betting. The appellants, Messrs. Partridge & Hancox, according to the case, "attended race courses as bookmakers or betters on horse-racing . . . but . . . they did not take commissions for betting." It would appear from the following dicta that a man who makes a systematic business of betting would be liable to assessment:—

DENMAN, J.: "I do not think 'employment' necessarily means a case in which a person is set to work by other persons to earn money. A man may employ himself in order to earn money in such a way as to come within that definition, but I think the word 'vocation' is a still stronger word. It is admitted to be analogous to the word 'calling,' which is a very large word; it means the way in which a person passes his life, and it is a very large word indeed.

"But I go the whole length of saying that, in my opinion, if a man were to make a systematic business of receiving stolen goods, and to do nothing else, and he thereby systematically carried on a business and made a profit of £2000 a year, the Income Tax Commissioners would be quite right in assessing him if it were in fact his vocation." (See p. 82 as to "Deductions.")

(*r*) 18 Q. B. D. 276; 56 L. J. Q. B. 251; 56 L. T. 203; 35 W. R. 276; 2 Tax Cas. 179.

CASE 3.

Case 3 covers "profits of an uncertain value and of other income described in the rules applicable to this case," and the basis is the income of the preceding year. The Case comprises six distinct classes of income—(*a*) to (*f*)—

(*a*) Any **interest,** whether **yearly or otherwise,** annuity or other annual payment whether payable within or without the United Kingdom, either as a charge on any property by virtue of any deed or will or otherwise or as a reservation thereout, or as a personal debt or obligation by virtue of any contract, or whether received and payable half-yearly or at any shorter or more distant periods.

(*b*) All **discounts.**

(*c*) **Interest on public securities** not chargeable under Schedule C (see p. 369).

(*d*) **Interest, annuities, dividends and shares of annuities** payable out of any public revenue where the half-yearly payments do not exceed 50*s.* and are not chargeable under Schedule C.

(*e*) **Deposit interest** paid or credited without deduction of tax by any **Savings Bank.**

(*f*) **Interest on Exchequer Bonds** and on **War Stocks** paid without deduction of tax.

When the above items are payable out of profits or gains brought into charge, no assessment is made on the recipient, as tax is deducted by the paper.

War Loans and Bonds, &c., were issued in several instances subject to the interest being paid without deduction of tax and being assessable on the recipient direct under Case 3.

Prior to 1922–23 there was no provision applying Case 3 in the year in which the income was *first* received, and there was no liability in the year of assessment following that in which the source of income ceased to be held. In *Brown* v. *National Provident Institution* (1921) (*s*) it was held that there could only

(*s*) 125 L. T. 425.

be liability in a year of assessment on Treasury Bills discounts if Treasury Bills were held in that year of assessment. Rule 2 to Case 3 charged the tax in respect of "each case," *i.e.* of (*a*) (*b*) (*c*) (*d*) (*e*) or (*f*), thus all income arising under one of these cases formed a separate subject matter of assessment and was controlled by the principle laid down in the *National Provident* case. For 1922–23 onwards sec. 17 of the Finance Act, 1922, provides for taxation, under Case 3, for the year in which the income is first received. This section substitutes the following for Rule 2 to Case 3 :—

> 17. The following Rule shall be substituted for Rule 2 of the Rules applicable to Case III. of Schedule D :—
>
> "2.—(1) The tax shall, subject as hereinafter provided, be computed—
>
> (*a*) as respects the year of assessment in which the profits or income first arise, on the full amount of the profits or income arising within that year ; and
>
> (*b*) as respects subsequent years of assessment, on the full amount of the profits or income arising within the year preceding the year of assessment :
>
> Provided that—
>
> (i) where the profits or income first arose on some day in the year preceding the year of assessment other than the sixth day of April, the computation shall be made on the profits or income of the year of assessment ; and
>
> (ii) where the profits or income first arose on the sixth day of April in the year preceding the year of assessment, or on some day in the year next before the year preceding the year of assessment other than the sixth day of April, the person charged shall be entitled, on giving notice in writing to the surveyor of taxes at any time within twelve months after the end of the year of assessment, to be charged on the amount of the profits or income of that year, and if the tax charged has been paid, any amount overpaid shall be repaid.
>
> (2) Tax shall be paid on the actual amount computed as aforesaid without any deduction."

Sec. 17 thus makes the assessments as shown below. Assume the total holdings of War Stocks under (*b*) were—

£1000	5 per cent.	purchased	May, 1922
500	,,	,,	September, 1922
2000	,,	,,	August, 1923
3000	,,	sold	September, 1924

The assessments would be as follows, the dividends being payable 30th June and 31st December :—

1922–23.

£	£ s.	£ s.
1000 at 5 per cent. for year . .	50 0	
500 „ „ „ ½ year . .	12 10	62 10

1923–24.

£	£ s.	£ s.
1500 at 5 per cent. for year .	75 0	
2000 „ „ „ ½ year . .	50 0	125 0

1924–25.

£	£ s.
3500 at 5 per cent. for year . .	175 0

The 1924–25 assessment could, under sec. 17 (2) (ii) be adjusted to the actual income of 1924–25, *i.e.*—

£3000 for ½ year =	£75
500 „ year =	25
	£100

CASES 4 AND 5.

See FOREIGN, p. 203.

CASE 6.

The 6th Case of Schedule D is a sweeping clause and applies to "any annual profits or gains not falling under any of the foregoing cases, and not charged by virtue of any other Schedule."

The basis of assessment is left to the discretion of the Commissioners and may be either on "the full amount of the profits or gains arising in the year of assessment, or according to an average of such a period, being greater or less than one year, as the case may require and as may be directed by the Commissioners."

See p. 49.

WEEKLY WAGE EARNERS.

A distinct method of assessment for weekly wage earners was introduced by secs. 27, 28, of the Finance (No. 2) Act, 1915 (which are now Rule 2 to Cases 1 and 2 of Schedule D), which provides that weekly wage earners shall be assessed quarterly in respect of their actual wages in each quarter, and collection shall be made accordingly. The provision is restricted to manual workers and does not cover clerks, typists, draughtsmen, or similar classes, and the expression "weekly wage earner" is statutorily defined by sec. 237 of the Income Tax Act, 1918, as follows:—

"Weekly wage earner" means a person who receives wages which are calculated by reference to the hour, day, week, or any period less than a month, at whatever intervals the wages may be paid, or who receives wages, however calculated, which are paid daily, weekly, or at any less intervals than a month.

The determination of whether a person is within the provision or not is by Rule 2 to be made "jointly" by the Board of Inland Revenue and the local Commissioners, and their decision is final.

Returns.—The employer is to make returns of wages paid, and a body corporate and company is liable to a penalty as well as the secretary (sec. 105 of Income Tax Act, 1918).

Total Income.—Total income for purposes of relief (p. 341) is to be based on the total wages charged for the four quarters of the year. The Board may allow abatement, &c., by reduction of the quarterly assessments or by repayment (sec. 27 of Income Tax Act, 1918).

Assessment.—Assessment is provided for as follows:—

The Commissioners of Inland Revenue may make regulations generally, with respect to the assessment, charge, and collection of income tax, in the case of weekly wage earners to whom the provisions of this Act with regard to quarterly assessment apply, and with respect to the procedure to be adopted for the purpose, and may, in particular, by those regulations in the case of those weekly wage earners, provide

for the assessment and charge by the surveyor, and for collection by a collector appointed by them, and for the application of the provisions and rules applicable to Schedule E, in cases where those rules and provisions are not otherwise applicable (sec. 131 of Income Tax Act, 1918).

Recovery.—On default in payment recovery may be by the ordinary Income Tax method of distraint (p. 386) or summarily as a civil debt.

Appeal.—Appeal may be made to the local Commissioners, who may add to their number by appointment (p. 3) or co-optation.

Additional Assessments.

Additional assessments under all Schedules may be made for the three preceding years. Sec. 125 of Income Tax Act, 1918.

This becomes four years for 1924–25, five years for 1925–26, and six years thereafter. Sec. 29 of Finance Act, 1923.

Succession and Reconstruction.

On a person or company succeeding to a business, or on alterations in the constitution of the proprietors of a business occurring, the question arises as to the basis of assessment being on either :

(1) The average of the three preceding years as if no change had taken place, or

(2) The actual profits made since such change.

It has to be decided whether the business is to be treated as (1) a continuing one, or (2) a new one. If the profits of the reconstructed concern are larger than those of the old concern, the assessment as a continuing business would be advantageous, as the average of the three preceding years would be less than the actual profit of the current year, but if the converse prevails, assessment as a new business would be preferable. Assume that a succession takes place in 1922, and that the actual profits of the concern for the preceding three years were as follows :—

	£	
1919 . .	3000	
1920 . .	1000	average = £2000
1921 . .	2000	

In the ordinary course the assessment for 1921–22 would have been made on the average, viz. £2000, so that if the profits of 1922 prove to be *e.g.* £3000, a considerable benefit would result from maintenance in principle of continuity, but if the 1922 profits were £1000, a corresponding loss of tax on £1000 would be incurred for 1922. If the business were treated as new, the assessment would be on the profit of the first year's working.

There is, however, no legal option vested in the taxpayer indiscriminately to require assessment as a new concern, but treatment as a new business is obtained by proving that the profits have fallen short by reason of some "specific cause" (*post*). The legal provisions governing successions and other changes are Rule 11 to 1st and 2nd Cases, Schedule D, and Rule 3 of the Miscellaneous Rules of Schedule D.

Rule 11 to 1st and 2nd Cases reads :

> If within the year of assessment or the period of average upon which the assessment is to be based a **change occurs in a partnership** of persons engaged in any trade or profession, by reason of *death*, or of *dissolution* of the partnership as to all or any of the partners, or by the *admission of a new partner*, or if any person *succeeds* to a trade or profession, the tax payable in respect of the partnership, or any of the partners, or of the person so succeeding shall be computed according to the profits or gains of the trade or profession during the respective periods prescribed by this Act, notwithstanding the change or succession, unless the partners or the person *succeeding* to the trade or profession prove to the satisfaction of the commissioners' that the profits or gains have fallen or will fall short from some *specific cause*, to be alleged to them, *since such change or succession* took place, *or by reason thereof*.

Rule 3 of the Miscellaneous Rules of Schedule D :—

> (1) If a person charged under this Schedule, whether the computation has been made on the profits of one year or on an average of years, **ceases** to carry on the trade, profession, employment, or vocation in respect of which the assessment was made, or **dies,** or becomes **bankrupt** before the end of the year of assessment, or from any other **specific cause is deprived of or loses the profits or gains** so computed, he or his executors or administrators may, **within three**

calendar months after the end of the year of assessment apply to the general Commissioners of the division for the amendment of the assessment.

(2) The general Commissioners, on proof to their satisfaction that paragraph 1 of this rule applies to the case, shall cause the assessment to be amended or vacated, **and give such relief as is just;** and shall, if necessary, direct repayment to be made of any sum which has been overpaid.

(3) A person who has succeeded to the trade, profession, or vocation of a person charged shall, subject to the provisions of Rule 9 of the Rules applicable to cases 1 and 2, be liable to pay the full tax charged without any new assessment, and no relief under this rule shall be granted in any such case unless the person so succeeding proves, to the satisfaction of the commissioners, that the profits or gains have **fallen short,** from some **specific cause, since, or by reason of,** the **succession.**

Section 26 of the Finance Act, 1921, provides that Rule 3 (1) (*ante*) shall not apply where the person charged has " continued to carry on *throughout the year of assessment*, the trade, profession, employment or vocation " for which the assessment is made.

This alteration applies from 1920–21 onwards.

Dealing first with the question of succession, it will be seen that the concluding words of Rule 11 and Rule 3 are almost identical in terms, reading as follows, after reciting that succession alone shall not alter the basis of assessment :—

Rule 11.	Sec. 134.
unless the partners or the person succeeding to the trade or profession prove to the satisfaction of the Commissioners that the profits or gains have fallen *or will fall short* from some specific cause, to be alleged to them, since such change or succession took place, or by reason thereof :	unless the person so succeeding proves to the satisfaction of the Commissioners, that the profits or gains have fallen short, from some specific cause, since, or by reason of the succession.

The addition in Rule 11 of the words " or *will* fall short " are consistent with the fact that Rule 11 is an assessment rule, *i.e.* rule to be applied in the initial making of the assessment, and is not applicable for subsequent adjustment of the assessment. Moreover, a time limit for alleging specific cause is

not given in Rule 11. Rule 3, which imposes a time limit of claim, allows adjustment subsequently to the making and determination of the original assessment.

Specific Cause.—The words "Specific Cause" have a particularly wide meaning, contrary to the restricted interpretation advocated by the Crown, and the words are sufficiently comprehensive to cover all material alterations which have an adverse effect on profits. In the first place, assessments are intended to be made on the basis of the profits antecedent to the succession, if such basis would give a fair assessment, but the introduction of the provision with regard to specific cause was made to meet the cases where material difference between the constitution of the business prior to and subsequently to the succession, renders assessment on the antecedent profits inequitable, and when the actual intentions of the legislature, combined with the wide and unqualified nature of the provision in question are considered, it will be seen that a restricted and strained interpretation of the words "specific cause" is insupportable. The words "fallen short" do not refer to the profits as a whole being reduced, but to a particular item only, thus the total profits of the altered concern may be greater than under the old regime and yet a "specific cause" be proved, such *e.g.* as when the profits immediately prior to succession are less than subsequently thereto but the *average* of the prior profits is higher.

A "specific cause" may be formed on the conversion of a private business into a limited liability company, owing to the payment of directors' fees. Assume that the conversion of a partnership took place on 1st January, 1922, and that the profits of the old business—the accounts of which were made up annually to 31st December—were as follows :—

Year to 31st December, 1918 . .	£3,000
" " " 1919 . .	£2,000
" " " 1920 . .	£4,000
" " " 1921 . .	£6,000

The assessment on the partnership for the year 1921–22 would have been determined (some months before the conversion) as £3000, being the average profits of three years ending 31st December, 1920. In practice the period from 1st January to 5th April is taken as one quarter. As the Income Tax year ends on 5th April, the assessment would be payable as regards three-fourths thereof by the partnership, and as regards one-fourth thereof by the limited company, but the latter would be entitled to allege "specific cause" under the latter parts of Rule 3 for the year 1920-21, and Rule 4 for the year 1921–22, thereby claiming to be assessed from the date of the conversion as a new concern, and thus ignoring past averages. As mentioned above, a "specific cause" would be formed by payment of directors' fees, which would reduce the *assessable* profits, and make the average of the three preceding years an incorrect assessment. This results from the fact that no deduction is allowed for partners' "drawings" in arriving at the assessable profit of a partnership, but, on conversion to limited liability, such "drawings" become salaries and directors' fees, which are separately assessed on the recipient under Schedule E (p. 360). Assuming, in the above example, that drawings accounted for £1000 per annum, which sum was paid, after the conversion, to the former partners in the shape of salaries and directors' fees, it will be seen that assessment of the limited company on the basis of the profits of the partnership would be inequitable, and result in a double assessment of £1000; first, under Schedule D, and secondly, under Schedule E. On producing the accounts for the period between 1st January and 5th April, 1922, the limited company could claim, under Rule 3, to be assessed on the actual profits of that period, and for 1922-23 on the profits of the first year's trading to 31st December, 1922, when the accounts for that period are available (see "Average," p. 49). It could alternatively be claimed, as regards the period from 1st January, 1922, to 5th April, 1922, that the assessment on the limited company should stand over until the accounts for the year

ending 31st December, 1922, are ready and then the assessment in question would be taken as one-fourth of the profits shown.

The limited company should be treated, for average purposes, as a "new business," but, in practice, assessment is made on the *actual* profits in each year until the Company has three preceding years of its own trading.

The partnership should also claim under Rule 3 to have their assessment restricted to the actual profits made in the period from 5th April, 1921, to 31st December, 1921, unless such actual profits exceeded three-fourths of the amount assessed when the allocation to the partnership of the latter portion of the assessment should be claimed.

The amounts of the allowances under Rule 3 are left to the sole discretion of the Commissioners, and there is no power in the Crown to question the Commissioners' ruling in the Courts, as the Crown's power to require the Commissioners to state a case for the opinion of the High Court only applies in the case of Appeals (see p. 340).

In *Furtado* v. *City of London Brewery Co. Ltd.*, [1914] C. A. (*t*), the company were assessed for the year 1910–11 on £63,384, and they alleged a "specific cause" of deprivation of profits under the first part of Rule 3, on the grounds that the increased Licence Duties imposed by the Finance (1909–10) Act, 1910, reduced the profits by £27,000, by which amount the company claimed to have the assessment reduced. The case was decided in the Court of Appeal in favour of the company, that the Commissioners' decision was final, and, owing to the independent constitution of the Commissioners (see p. 2), and their freedom from official connexions with possible bias, it is of particular benefit to the taxpayer that the Crown is unable to review such decision. Owing to the Court holding itself bound by the fact that it had no jurisdiction to review the Commissioners' determination, the actual interpretation of the words "specific

(*t*) 1 K. B. 152–709; 83 L. J. K. B. 255; [1913] W. N. 354; 30 T. L. R. 177; 58 S. J. 270; 6 Tax Cas. 382.

cause" was not dealt with, but the Commissioners are now able to give and maintain an equitable construction on a technical point, a point which is of obvious benefit to taxpayers. The following dicta of SWINFEN EADY, L.J., are of *considerable moment* :—

> "By the Income Tax Act, 1842, sec. 118 (now sect. 136 of the Income Tax Act, 1918), a right of appeal is given to any person thinking himself aggrieved by any assessment, provided it is brought within the time limited. On such an appeal, the appellant disputes the validity of the assessment.
>
> "By secs. 133 (since repealed) (reintroduced in 1914, and, as sect. 43 of the Income Tax Act, 1918, repealed by sec. 25 of the Finance Act, 1921), and 134 (now Rule 3 (*ante*)) of the same Act, applications may be made for abatement on account of diminution of income, or ceasing to exercise the trade before the end of the year, or from any other specific cause being deprived of the profits or gains on which the assessment was made. On the applications, the validity of the assessment is not disputed, but admitted, the claim for relief being based upon something which happened since the assessment was made, and which could not have been made the subject of an appeal against the assessment.
>
> "The argument for the Crown in support of the claim to an appeal on applications made under sec. 134 is based upon the following words in sec. 118 : 'and no appeal shall be received after the time so limited, except on the ground of diminution of income as herein mentioned.' These words occur in a section giving a right of appeal against assessments, and limiting the time within which such appeals may be brought. The words 'and no appeal shall be received after the time so limited' make it clear that 'appeals' can only be brought within the time limited and not afterwards.
>
> "We are quite unable to hold that the provision excepting these applications from the time within which appeals can be brought is sufficient to make them appeals, which they are not in fact, and to give a right of appeal to the High Court which would not otherwise exist.
>
> "Sec. 134 gives the right 'to make application,' not to appeal. There is not anything from which the applicant is appealing. The reference in the same section to causing 'the assessment to be amended' is purely consequential. Similar words were contained in sec. 133, but have dropped out of sec. 24 of the Finance Act, 1907, which has now replaced sec. 133.
>
> "It was urged by the Solicitor-General that sec. 164 (sec. 27 of the Income Tax Act, 1918), made applications for exemption 'appeals,' which they would not otherwise be; and if so, why

might not sec. 118 have the same effect with regard to applications on the ground of diminution of income? The answer is that applications for exemption under sec. 164 are in substance and in fact appeals against any assessment being made. The person claiming exemption disputes that he ought to be assessed to income tax at all; and if he succeeds, the Commissioners are required to 'discharge the assessment,' and if the surveyor objects, the taxpayer is given an appeal to the Commissioners against the assessment, in like manner as other aggrieved persons are given a right to appeal against their assessments.

"In all these cases, the complaint is against the assessment, and is strictly an appeal against the assessment.

"We are of opinion that an application for relief under sec. 134 is not 'an appeal' under the Income Tax Acts, and is not within sec. 59 of the Taxes Management Act, 1880 (sec. 149 of the Income Tax Act, 1918), and the Commissioners have no power to state a case, and consequently that the decision of SCRUTTON, J., was correct."

A "*specific cause*" may also arise in, *inter alia*, the following examples:—

(1) Retirement of a partner when such retirement is synonymous with loss of custom, whether through loss of personal influence or withdrawal of capital.

(2) Payment of interest on a bank overdraft raised on a withdrawal of capital.

(3) Widow succeeding to business of husband and being compelled to employ a manager.

(4) Son succeeding father in an agency business, but some of the agencies not being given to the son.

(5) On retirement of partner, a workman setting up in opposition.

(6) Succession to a retail business, but not taking over all the branches; or otherwise discontinuing part of the business.

(7) Succession by non-working partners to a business of working partners, and consequent employment of managers or extra foremen.

(8) Payment of directors' fees on conversion of private partnership to limited liability.

(9) Colliery company taking over a colliery which at the time of succession had just worked out a thick seam of coal,

leaving only thin seams, which were less productive, and therefore resulted in a "falling short" of the profits.

(10) Death of a partner in a profession when such partner personally influenced certain business.

The War was prohibited from being a "specific cause" (sec. 43 of the Income Tax Act, 1918).

EXAMPLE.

A Company took over a business on 1st August, 1921, and the accounts from 1st August, 1921, to 31st March, 1922, show £500 profit. The assessment on the old company was £2000 for 1921–22, based on the average profits of the three preceding years. The actual profits of the old company for the period from 31st March to 31st July, 1921, were £200, and the actual profits of the new company from 1st August, 1921, to 31st March, 1922, were £500. Notice was given by the old company on 1st July, 1922, that a reduction to the said actual profit of £200, or the proportion thereof, from 6th April to 31st July, was claimed from £666 ($\frac{1}{3}$ of £2000) under Rule 3, on the ground of "cessation" under the first part of the said Rule, and on 1st July, 1915, the new company claimed, under Rule 3, that their portion of the assessment, viz., £1333 ($\frac{2}{3}$ of £2000), be reduced to £500 on the grounds of "specific cause" (*ante*), under the latter part of the said section, and as both companies had paid their respective amounts of tax on the original assessment, repayment could be claimed.

See, as to the old company, "Discontinuance," p. 54, and as to the new company "Commencement," p. 52.

Admission of Employee as Partner.—On admission of an employee into partnership the assessment on average includes profits which have been reduced by the amount of the employee's remuneration, which latter was separately assessable on the recipient, whereas a partner's drawings and profits are not separately assessable so that the average is disadvantageous to the Revenue, but this cannot legally be avoided as Rule 11 specifically provides that, on the admission

of a partner, the assessment shall be based on the average of the three preceding years "notwithstanding such change." Assuming profits to be £750 after debiting the employee's remuneration of £250, the assessment for *e.g.* 1922–23, on the employee becoming a partner in that year, would be £750, whereas the profits accruing to the partners would be £1000.

Cessation.—Rule 3, in its references to cessation, is not limited to complete cessation of the business but merely to cessation *by the person assessed*, as an opposite construction would introduce a distinction between the taxation of persons involved in the respective circumstances of (*a*) ceasing to carry on a business which has in itself ceased to exist, and (*b*) ceasing to carry on a business which has been continued by another person. This distinction is non-existent as the section deals with the person assessed, not with the business, and, moreover, it is clearly inequitable that a benefit granted to (*a*) should be denied to (*b*). This should also apply equitably to "Discontinuance" (see p. 54). but *Bartlett* v. *I. R.* (1914) (*a*), held that Rule 8 (2) to cases 1 and 2 of Schedule D. only applied when the business itself ceased. Rule 3 also extends to give "Relief" (see p. 341).

Rule 3 is elaborated in Rule 8 (2) (p. 54).

The following cases relate to Rule 11:—*Ryhope Coal Co.* v. *Foyer* (1881) (*b*). The conversion of a private partnership into a limited liability company was held to create a succession, but an extraordinary depression of trade was advanced as, and held to constitute, a "Specific Cause."

> GROVE, J.: "The Scotch Court, in the case which has been referred to, held that depression of trade was a 'specific cause.' In one sense I agree with them, except that I should put it thus, that depression of trade may be, but is not necessarily, a specific cause. It must be, to my mind, to make it a specific cause, something unusual, exceptional, extraordinary. Here there was, to use the words of the Commissioners, an 'extraordinary depression in the iron and coal trades,' by which it is found that the profits of this concern are reduced to less than

(*a*) 3 K. B. 686; 111 L. T. 852
(*b*) 7 Q. B. D. 485; 45 L. T. 404; 30 W. R. 87; 1 Tax Cas. 343.

half its former profits. I think, therefore, the Appellants come within that section, and are entitled to the benefits of it; and I think that the assessment should be on the profits and gains for one year."

(See also *Inland Revenue* v. *Farie*) (1878) (*c*).

Highland Railway Co. v. *Special Commissioners of Income Tax* (1885) (*d*). The railway company, who were also sea carriers under their special Act, discontinued certain steamships which they had been running at a loss, and it was held that in the following year the assessment must be based on the net profits of the whole undertaking in the year preceding the year of assessment (railways are not assessable on the three years' average, see p. 57). The Inspector of Taxes claimed that as the steamship portion of the business was not being carried on in the year of assessment it should be excluded from the profit of the preceding year, thus avoiding the reduction of the assessment by the amount of the loss on the steamships, but the LORD PRESIDENT held that: "I think, therefore, that the preceding year to the year of assessment having been taken as that upon the profits of which the assessment is to be made, the Commissioners were bound to take the profits of that year just as they actually stood, in point of fact, whether any part of the business of that year has been discontinued in the subsequent year, or not."

Alexander Ferguson & Co., Ltd. v. *Aikin* (1898) (*e*). The Company acquired the business of a firm of whisky distillers, blenders, &c., and for some years prior to such acquirement the firm had not worked any distillery, but the Company worked a distillery, and in the accounts for a period of about 14 months after its formation included the results of the business carried on at such distillery. The Commissioners decided that there was not a succession within Rule 11 as there was not a sufficient or general identity between the business carried on by the old partnership and the new business carried on by the

(*c*) 16 Sc. L. R. 189.
(*d*) 23 Sc. L. R. 116; 13 R. 199; 2 Tax Cas. 151.
(*e*) 4 Tax Cas. 36.

new Company, and that therefore the assessment could not be based on the average profits of the three preceding years but on the average profits, since acquirement by the Company (about 14 months). The former would give a smaller assessment owing to the distillery not being worked during the whole of the three years. This case is clouded by the Commissioners' finding of fact which precludes review in the Courts (p. 334), but the Lord President, while holding that the question of identity is a question of fact not for the Court to decide, expressed his agreement with the Commissioners' ruling.

> Lord MacLaren held that "on the question of continuity of management, the case of Ryhope (*ante*) is an authority to the effect that there may be continuity in the person of a Joint Stock Company as well as in that of a private firm taking over a business. No such question is raised here. As regards the identity of the character of the business, that appears to me, as it does to your Lordships, to be a pure question of fact, because there may be cases where there is substantial identity, notwithstanding some difference as to the branches carried on, and there may be cases where a new concern carrying on a large business, absorbs a small one, and cannot in any legitimate sense be regarded as their successors; but this is a question of fact for the Commissioners, and I assume they have rightly decided it."

Bell v. *National Provincial Bank of England, Ltd.*, [1904] (*f*), C. A. The Bank, which had 199 branches, purchased the business of the County of Stafford Bank at Wolverhampton (which had only one office) and took over the staff. The profits from the Wolverhampton branch were then indistinguishably merged in the general profits. The Crown contended that there was a "succession" within Rule 11 and that, therefore, the Profits of the Stafford Bank should fall into the average, but the Company urged that their acquisition of the Stafford bank should be treated on the same footing as the opening of a new branch, *i.e.* the profits of the branch prior to its acquirement should be ignored in the computation of the three years'

(*f*) [1903] 2 K. B. 249; 67 J. P. 329; 72 L. J. K. B. 590; 88 L. T. 840; 19 T. L. R. 532; reversed [1904] 1 K. B. 149; 98 J. P. 107; 73 L. J. K. B. 142; 90 L. T. 2; 52 W. R. 406; 20 T. L. R. 97; 5 Tax Cas. 1.

average for assessment on the profits of the National Provincial Bank. It was held that there was a " succession " and that the profits of the Stafford Bank fell to be included in the three years' average.

The MASTER OF THE ROLLS stated that :

> " It seems to me that the words of Rule 4 are plain, and that if the National Provincial Bank had not existed, but some new company had been formed to take over for the first time the business of the Stafford Bank, there would have been a case directly falling in terms within the words of the 4th Rule (now Rule 11) : ' If any person shall have succeeded to any trade, manufacture, adventure or concern.' In the case I put of a new company formed for the first time and acquiring the Stafford Bank, that would clearly be a case of a person succeeding to a concern. What difference does it make that that person who succeeds to the concern should himself already have an existing business ? Does he the less succeed to the new one because he had the old one ? It seems to me certainly not. He had the old one before. He has the old one still and the new one in addition, and to the new one, it seems to me, he has succeeded."

Watson Bros. v. *Lothian* (1902) (*g*). A tramp steamship (*i.e.* a cargo ship having no regular trading ports) was sold, but no books, accounts, or lists of customers were included in the sale. The LORD PRESIDENT held that if the books and a list of customers had been transferred, and if there had been any introductions or recommendations given, a very different state of facts would have occurred, but the case in point was comparable with a ship being put up to auction. He further pointed out that " succession " is a case analogous to a change in partnership, and that if a succession had occurred in the case of the ship, it would equally apply to a horse bought in open market, or to a carriage knocked down at a sale. LORD MCLAREN gave an important dictum in that the question of succession is one of fact (see p. 334 as to the Commissioners' despotic powers on points of *fact*).

In *Stockham* v. *Wallasey U.D.C.* (1906) (*h*), a tramway

(*g*) 4 F. 795 ; 39 Sc. L. R. 604 ; 4 Tax Cas. 441–6.
(*h*) 71 J. P. 244 ; 95 L. T. 834 ; 5 L. G. R. 200.

undertaking was transferred to a new company and the latter at the same time acquired the business of an omnibus company, carrying on the two businesses simultaneously. Under a statutory power of compulsory purchase a local authority purchased the tramway concern and proceeded to substitute electric trams for the horse-drawn vehicles. It was held that the local authority had succeeded the company and had not commenced a new business. The assessment was, therefore, to be made on the average of the three preceding years.

(See p. 169, " Depreciation " as to the effect of succession on allowances for depreciation.)

In order to constitute " succession " there must be a continuity of identity of the business, but if assessment on the average under " succession " would result in an assessment higher than an assessment on the profits since succession, the proving of a " specific cause " (*ante*) will bring the assessment on to the basis of that of a new business.

Pure Succession.—When there is a succession devoid of material change, and, therefore, of " specific cause," Rule 9 to Cases 1 and 2 of Schedule D applies and gives repayment where necessary. Sub-sec. 2 reads that, on receipt of the Inspector's certificate of succession under sub-sec. 1 :—

> The commissioners shall cause notice to be given to the respective parties of a meeting of the commissioners to consider it, and after examination of the said persons, if they attend, or on other satisfactory proof of the facts, the Commissioners shall adjust the assessment by charging the successor with a fair proportion thereof from the time of his succeeding to the trade, profession or vocation, and relieving the person originally charged from a like amount.

The adjustment in the case of a pure succession is, in practice, made by the Inspector, and in some instances is divided in proportion to the respective number of days applicable to each party, and in other cases by the level months approximately applicable. The taxpayer may require the operation of the former method.

Taking *e.g.* an assessment of £1460 and that B succeeded

on 10th August to the business of A the division would be as follows :—

A

$\frac{127}{365}$ of £1460 = £508

B

$\frac{238}{365}$ of £1460 = £952

£1460

DEDUCTIBLE EXPENSES.

As was pointed out at the commencement of the chapter on Schedule D, the most vitally important part of Income Tax law and practice is that covering deductible expenses. In dealing with this question the law and practice, with general principles, are first given, and then deductions are individually treated alphabetically. In this alphabetical arrangement are also included particular taxable subjects and concerns, as these have such an intimate connexion with deductible expenses as to render it inadvisable to separate their treatment from that of such expenses.

It is strictly necessary with regard to claims for admission of expenses as deductions, that advantage be taken of the powers of the District Commissioners with regard to the adoption of equitable constructions on hard technical points. To be consistent with justice, profits for Income Tax purposes should not differ from profits in a commercial sense, and, to a very material degree, the District Commissioners are able to make assessments approximate to the latter, as they possess, in practice, very extensive discretionary powers. The Commissioners' decision on a point of *fact* is conclusive, as it cannot be reviewed (p. 334), but on a point of law the Inspector of Taxes may require the Commissioners to state a Case for the opinion of the High Court of Justice. It is only on exceptional points that Inspectors of Taxes make such a request, as they do not question the discretionary powers of the Commissioners,

although they persistently urge adherence to strict legal construction.

In *W. Smith* v. *Incorporated Council of Law Reporting* (1914) (p. 289), it was laid down that the Commissioners were to decide (what was a question of *fact*) whether deductions claimed were sums "wholly and exclusively" (*i*) expended for the purpose of the trade and that the only remaining question for the decision of the Court was whether there was evidence upon which they could make their findings of fact.

Owing to the entire independence of the various bodies of District Commissioners, who are in no connexion with the procedure outside their individual districts, there is an absence of uniformity in practice throughout the kingdom, thus creating the situation of a particular allowance being admitted in one district and refused in another; but if the taxpayer acquainted the Commissioners with the fact that the allowance had been made in another district the Commissioners would generally admit such allowance.

The Income Tax law does not specify many deductible expenses, but leaves the question to turn on the words "wholly and exclusively" (*post*).

The law involved, which has been the subject of many highly controversial cases in the Courts, is as follows, and refers to Schedule D, and applies to No. III. of Schedule A (see p. 362 for Schedule E):—

Rule 3 to Cases 1 and 2, Schedule D.

In computing the amount of the profits or gains to be charged, no sum shall be deducted in respect of—

(*a*) Any disbursements or expenses, not being money **wholly and exclusively** laid out or expended for the purposes of the trade, profession, employment, or vocation;

(*b*) Any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any domestic or private purposes distinct from the purposes of such trade, profession, employment, or vocation;

(*c*) The rent or annual value of any dwelling-house or domestic

(*i*) Page 93.

offices or any part thereof, except such part thereof as is used for the purposes of the trade or profession ; Provided that where any such part is so used, the sum so deducted shall be such as may be determined by the Commissioners, and shall not exceed two-thirds of the annual value or of the rent *bonâ fide* paid for the said dwelling-house or offices. (Sec. 31 of the Finance Act, 1921, amends the above by substituting for the words " shall not exceed two-thirds," the following : shall not, unless the Commissioners are of opinion that, having regard to all the circumstances, some greater sum ought to be deducted, exceed two-thirds."

(*d*) Any sum expended for **repairs** of premises occupied (*k*), or for the **supply, repairs or alterations of any implements, utensils, or articles** employed for the purposes of the trade, profession, employment, or vocation, beyond the sum usually expended for those purposes according to an average of three years preceding the year of assessment ;

(*e*) Any **loss not connected with or arising out of the trade,** profession, employment, or vocation.

(*f*) Any **capital withdrawn from,** or any **sum employed or intended to be employed as capital** in such trade, profession, employment, or vocation ;

(*g*) Any **capital employed in improvements of premises occupied** (*k*) for the purposes of the trade, profession, employment, or vocation ;

(*h*) Any **interest** which might have been made if any such sums as aforesaid had been laid out at interest.

(*i*) Any **debts,** except **bad debts,** proved to be such to the satisfaction of the commissioner and **doubtful debts** to the extent that they are respectively estimated to be bad. In the case of the bankruptcy or insolvency of a debtor, the amount which may reasonably be expected to be received on any such debt shall be deemed to be the value thereof :

(*j*) Any **average loss** beyond the actual amount of loss after adjustment ;

(*k*) Any sum recoverable under an **insurance** or contract of indemnity ;

(*l*) Any **annual interest,** or any **annuity,** or **other annual payment** payable out of the profits or gains ;

(*m*) Any **royalty** or other sum paid in respect of the user of a patent.

The specific items mentioned in the above and the following rules are dealt with in detail under the respective headings in the alphabetical list of " Deductible Expenses and Subjects

(*k*) The deduction for repairs is restricted to repairs of premises *occupied* for the purposes of the trade, but see " Tied Houses," p. 104.

of Assessment," commencing at p. 95, and also the following specific provisions of the law :—

1. Allowance of Excess Profits Duty (Rule 4 of Cases 1 and 2 of Schedule D).

2. Annual value of business premises (Rule 5 and sec. 18). of Finance Act, 1919).

3. Depreciation of machinery or plant (Rule 6).

4. Obsolescent machinery or plant (Rule 7).

5. Allowance of Corporation Profits Tax (sec. 31 of Finance Act, 1920).

6. Interest paid on arrears of Excess Profits Duty (sec. 29 of Finance Act, 1922).

7. Contributions to Superannuation Funds (sec. 31 of Finance Act, 1922).

8. Allowance of profits allocated to, reserved or expended for policy holders or annuitants (sec. 16 of Finance Act, 1923).

Sec. 209 of Income Tax Act, 1918.

(1) In arriving at the amount of profits or gains for the purpose of income tax :—

(*a*) no other deductions shall be made than such as are expressly enumerated in this Act ;

(*b*) no deduction shall be made on account of any annual interest, annuity, or other annual payment to be paid out of such profits or gains in regard that a proportionate part of the tax is allowed to be deducted on making any such payment.

(2) In arriving at the amount of profits or gains from any property described in this Act, or from any office or employment of profit, no deduction shall be made on account of diminution of capital employed, or of loss sustained, in any trade or in any profession, employment or vocation.

(See also " Annual Value," p. 95.)

Many contrary judicial opinions have been given on what constitutes assessable Income Tax profit, and, apart from the allowances specified by law, the constitution of a deductible allowance is left to the operation of the words " wholly and exclusively laid out or expended for the purposes of such trade," therefore the issue in practically all questions of deductible expenses is influenced solely by these words. The Crown has advocated a strained interpretation of the words, contending, in effect, that only expenses without which the

business could not be carried on are admissible, thereby making Income Tax "profit" unrecognizable from a commercial point of view and approximating to gross profit instead of net profit. This argument would require the words "wholly and exclusively" to read "wholly, exclusively, and *necessarily*." As the legislature has not made this addition it cannot be assumed that it is implied, in view of the fact that when the legislature intended the word "necessarily" to be incorporated it has done so specifically, as proved by the Schedule E provisions as to deductions, which, by Rule 9 of Schedule E, read :—

> If the holder of an office or employment of profit is **necessarily** obliged to incur and defray out of the emolument thereof the expenses of travelling in the performance of the duties of the office or employment or of keeping and maintaining a horse to enable him to perform the same, or otherwise to expend money **wholly, exclusively, and necessarily** in the performance of the said duties there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed.

Rule 2 of the General Rules to all Schedules enacts that the deductible allowances to clergymen are limited to expenses incurred "wholly, exclusively, and *necessarily*, in the performance of his duty as a clergyman."

The above Schedule E provisions clearly create a distinction between that Schedule and Schedule D, and demonstrate that the admission of all expenses which are *bonâ fide* laid out for the purpose of increasing profits, and which do not fall within the specifically prohibited allowances (*ante*), was intended by the legislature as being sufficiently secured by the wide words "wholly and exclusively." These words, however, were interpreted in *Watney* v. *Musgrave* (1880) (*l*) (see p. 111) in a particularly narrow sense, but in subsequent cases the dicta in question were strongly disapproved.

KELLY, C.B., stated :

> "that it is merely and only the costs and expenses of production of the article that are to be deducted. . . . I am not

(*l*) 5 Ex. D. 241 ; 44 J. P. 968 ; 49 L. J. Ex. 493 ; 42 L. T. 690 ; 28 W. R. 491 ; 1 Tax Cas. 272.

> aware that there is any authority whatever for any deduction of any expenses whatsoever incurred after the beer is produced and really to promote or increase the sale."

The above dicta would reject travellers' salaries and, in fact, be equivalent to contending that "trading" for Income Tax purposes consisted solely of producing and not also of selling. The Chief Baron also advanced the point that advertisements, not being necessary to production, are inadmissible, but such expenses are admitted without question (except under exceptional circumstances, see p. 102).

The insupportability of the above case is manifested in *Smith* v. *Lion Brewery Co., Ltd.*, [1911] (see p. 115), Channell, J., holding that:

> "The case of *Watney* v. *Musgrave* has expressions in it which may be contradictory to that (*deductibility*), but expressions which it can hardly be pretended and it is not pretended, would bear critical examination."

Moreover, in *Reid's Brewery Co., Ltd.* v. *Male* (1891) (see p. 112), it was stated that the Lord Chief Baron possibly had not before him "all the cases that might possibly arise in the future which might militate against the decision which he gave." *Watney* v. *Musgrave* is, therefore, not decisive of the contention that the words "wholly and exclusively" infer the inclusion of the word "necessarily."

It has been extensively advocated by the Crown that the words in question prohibit the allowance of expenses which are not a necessary feature of the carrying on of the business, although such expenses create an increased profit which bears tax. This contention is one which the Commissioners should be urged to reject, as its operation results in a portion of the profits being taxed but disallows expenses without which it is impossible to obtain such increased portion of the profits.

A similar point was raised in *Guest, Keen, and Nettlefolds, Ltd.* v. *Fowler*, [1910] (*m*) (see p. 307) and decided against the

(*m*) 1 K. B. 713; 79 L. J. K. B. 563; 102 L. T. 361; 26 T. L. R. 337; 5 Tax Cas. 511.

Crown. The appellants were members of the Steel Hoop Manufacturers' Association and the objects of the association were maintenance of prices, thus, by avoiding competition, larger profits were produced than would have been otherwise possible. Each of the members of the association was entitled to a fixed percentage of the total orders received by the whole of the members, and if any member had invoiced more than the percentage, a fixed amount of 10*s.* per ton on the excess had to be paid by that member to the association, which distributed the payment in due proportions amongst the members who had invoiced less than their proportionate quantities. The appellants were charged on the excess of the total payments made by them over the receipts from the association.

> BRAY, J., held that " it seems to me that I am bound to find that this money was paid for the purpose of keeping up the price and thus earning the larger profits of the trade. Therefore, unless there is any authority to the contrary, I think I am bound to find that the Appellants have shewn that this is money ' wholly or exclusively laid out or expended for the purpose of such trade.' "

This decision introduces a wide interpretation of the words in question, and *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce* (1915) (p. 106), has definitely decided that expenses necessary to earn particular increased profits are fully allowable. LORD PARKER held that " the increased profits are assessable to Income Tax under Schedule D, and therefore all necessary cost and expenditure entailed by their possession must necessarily be brought into account in ascertaining the balance of profits and gains of the trade." This covers the case of, *e.g.*, expenditure of multiple shop companies on branches.

The question of payments made by one company to another was raised in *Moore* v. *Stewarts & Lloyds, Ltd.* (1906) (*n*), where a company made agreement with another company in the same business to make up the profits of the latter company to

(*n*) 43 Sc. L. R. 811 ; 8 F. 1129 ; 6 Tax Cas. 501.

a certain amount in consideration of the former being given a commanding interest in the latter. Deduction was claimed of payments under the agreement, and these were allowed as the question was one of fact for the Commissioners. The payments were held not to be an application of profits earned but an outlay to earn the profits.

In *Strong & Co. of Romsey, Ltd.* v. *Woodifield*, [1906] (*o*) the company, who were brewers, owned a licensed house which they had under management. A guest obtained damages in respect of injuries sustained at the inn through a falling chimney, and it was held in the House of Lords that the damages did not form an allowable deduction from the brewery profits, as they were not wholly and exclusively incurred in the course of the business as innkeepers but "fell upon them in their character not of traders but of householders."

> Lord Chancellor: "In my opinion, however, it does not follow that if a loss is in any sense connected with the trade, it must always be allowed as a deduction; for it may be only remotely connected with the trade or it may be connected with something else quite as much as or even more than with the trade. I think only such losses can be deducted as are connected with it in the sense that they are really incidental to the trade itself. They cannot be deducted if they are mainly incidental to some other vocation, or fall on the trader in some character other than that of trader."

His lordship further mentioned that the nature of the trade has to be considered. Compensation to railway passengers might be deducted by the railway company, but not a loss incurred by a grocer owing to a window shutter falling and injuring a man walking in the street.

Lord Davey expressed the opinion that a deductible expense is not created by being made in the course of, or arising out of, or being connected with, the trade, or being made out of the profits of the trade. "It must be made for the purpose of earning the profits."

(*o*) A. C. 448; 75 L. J. K. B. 864; 95 L. T. 241; 22 T. L. R. 754; 5 Tax Cas. 215.

A brewery company having houses under management, has obviously to incur the risk of such damages in the course of the business, and, as regards a deductible expense being made for the purpose of earning the profits, it is obvious that the particular profits of the particular house cannot be earned without incurring the possibility of having to bear the expense of damages.

LORD JAMES OF HEREFORD, although concurring in the decision, had doubts which he stated would not have existed had the accident occurred to a stranger walking in the street.

INCOME TAX PROFIT.

The question of deductible expenses, and therefore Income Tax profit, has been placed on an entirely different basis by *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce* (1915) (*p*), under which case Income Tax profit and commercial profit are one and the same except that the former specifically prohibits certain expenses. *Income Tax profit is commercial profit with the sole exception that certain expenses are expressly prohibited*, therefore, unless a particular expense is specifically prohibited, it is allowable for Income Tax purposes. Many questions turn on whether an expense is attributable to capital or revenue, but it was laid down in *English Crown Spelter Co., Ltd.* v. *Baker* (1908) (p. 137), that capital for Income Tax purposes is capital as understood "in common parlance," *i.e.* commercially, and this was supported in *Vallambrosa Rubber Co.* v. *Farmer* (1910). LORD LOREBURN, in *Usher's* case, laid down that "profits and gains must be estimated on ordinary principles of commercial trading by setting against the income earned the cost of earning it, subject to the limitations prescribed by the Act," and LORD PARMOOR held that "deduction must be made of all expenditure incidental to the trade necessary to earn the receipts, and by applying, in the computation, the ordinary principles of commercial trading." LORD PARKER

(*p*) A. C. 433; 84 L. J. K. B. 417; 59 S. J. 144; 112 L. T. 651; 31 T. L. R. 104; 6 Tax Cas. 399.

ruled that where a deduction is proper and necessary to be made in order to ascertain the balance of profits and gains, " it ought to be allowed notwithstanding anything in the First Rule (p. 83) (now Rule 3), or in sec. 159 (p. 85) (now sec. 209 of the Income Tax Act, 1918), provided there is no prohibition against such an allowance in any of the subsequent Rules applicable to the case."

Earl Loreburn also mentioned that the decision in the case may cut deep into the Revenue " not merely from brewery profits, but also from other trades which have ancillary trades connected with or supported by them."

The following dicta are on " profits " for Income Tax purposes :

" It cannot of course, be denied that, as a matter of business, profits are ascertained by setting against the income earned the cost of earning it, nor that as a general rule, for the purpose of assessment to the Income Tax, profits are to be ascertained in the same way.

" What is the meaning of ' profits and gains ' as found in the concluding words of the fourth rule ? Unless the context requires a different meaning, or the words appear to be used throughout the Act in another sense, I think they must be construed according to their ordinary signification. When we speak of the profits and gains of a trader we mean that which he has made by his trading. Whether there be such a thing as profit or gain can only be ascertained by setting against the receipts the expenditure or obligations to which they have given rise.

" In the taxing provision of the Income Tax Acts the tax is imposed in respect of the annual profits or gains arising or accruing to any person from any trade, ' to be charged for every twenty shillings of the annual amount of such profits or gains.' Here, it cannot be doubted, I think, the words ' profits or gains ' are used in the sense I have indicated. There is nothing in any part of the Act to show the contrary. Indeed when the rules are considered they confirm the view

that this meaning is to be attributed to the words. Their general purpose is to prohibit certain matters being taken into account which ought not to be set against the receipts when profits are being ascertained. But the scheme of the Act obviously is to tax, not receipts, but profits properly so called." *Gresham Life Assurance Society* v. *Styles*, [1892] (*q*).

> "For the purpose of arriving at the balance of profits, all those deductions from the receipts, all that expenditure which is necessary for the purpose of earning the receipts must be deducted, otherwise you do not arrive at the balance of profits; indeed, you do not ascertain and cannot ascertain whether there is such a thing as profit or not. The profit of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts. That seems to me to be the meaning of the word 'profits' in relation to any trade or business." *Russell* v. *Aberdeen Town and County Bank* (1888) (*r*).
>
> "The difference between the expenses necessary to earn the receipts of the year, and the receipts of the year, are the profits of the business for the purpose of the Income Tax." *City of London Contract Corporation* v. *Styles* (1887), C. A. (*s*).
>
> "Now the profit upon which the Income Tax is charged is what is left after you have paid all the necessary expenses to earn that profit. Profit is a plain English word; that is what is charged with Income Tax." *Ashton Gas Company* v. *A. G.*, [1906] (*t*).

In construing specific allowances for wasting assets and ruling that such was money "employed or intended to be employed as capital" within Rule 3, *ante*, it was stated that the law does "not permit . . . all deductions which a prudent trader would make in ascertaining his own profits." This, however, refers to a specific provision of the law, and not solely to the words "wholly and exclusively." *Alianza Company, Ltd.* v. *Bell*, [1906] (*a*).

(*q*) A. C. 309; 56 J. P. 709; 62 L. J. Q. B. 41; 67 L. T. 479; 41 W. R. 270; 3 Tax Cas. 185.

(*r*) 13 App. Cas. 418; 53 J. P. 244; 58 L. J. P. C. 8; 59 L. T. 481; 2 Tax Cas. 321.

(*s*) 4 T. L. R. 51; 2 Tax Cas. 239.

(*t*) A. C. 10; 70 J. P. 49; 75 L. J. Ch. 1; 93 L. T. 676; 22 T. L. R. 82; 13 Mans. 35.

(*a*) A. C. 18; 75 L. J. K. B. 44; 93 L. T. 705; 54 W. R. 413; 22 T. L. R. 94; 5 Tax Cas. 172.

The destination of profit is immaterial. *Mersey Docks* v. *Lucas* (1883) (*b*).

Extent of the Words "Wholly and Exclusively."

The multitudinous cases which have arisen on the interpretation of these words—words which occupy the premier position of importance in Income Tax—have created many inconsistencies between the various rulings, but the discrediting of *Watney* v. *Musgrave* and the important issue of *Guest, Keen, and Nettlefolds, Ltd.* v. *Fowler*, supplemented by the momentous case of *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce*, have supported the intention that the words in question have not the restricted inequitable meaning which has been so often advanced by the Crown. The words "wholly" and "exclusively" are scarcely distinguishable, and in *Strong & Co. of Romsey, Ltd.* v. *Woodifield* (*ante*), it is difficult to support any argument that the damages were not incurred wholly in the course of the business, as it is not easy to distinguish the accident from one occurring at the brewery to an employee.

To contend that expenses are not incurred wholly for the purpose of a business is equivalent to assuming that business incorporates a strong charitable element. It is not permissible to look at the actual destination of the expenses, but the question to be considered is, *has the trader expended the money solely with the intention of benefiting his business?* (See p. 121.)

It is an unquestionable fact that many refused deductions are laid out solely with a view to the acquisition of profit, and in the words "wholly and exclusively laid out or expended for the purposes of such trade," the word "trade" clearly means the act of trading for the purpose of profit, and as it cannot be contended that trading concerns are charitable institutions, it follows that all expenses of such concerns are, so far as the proprietors of the concerns are concerned, expended wholly and exclusively for the purpose of obtaining the profits of such

(*b*) 8 App. Cas. 891; 53 L. J. Q. B. 4; 49 L. T. 781; 32 W. R. 34; 2 Tax Cas. 25.

concerns. It is immaterial if the expenses indirectly benefit matters outside the particular business, as such effect should not be taken cognisance of, as it may be outside the influence of the proprietors of the business in question. The question to be considered is, are the expenses incurred *by the traders* solely for the purpose of his trade, *i.e.* of " trading "—acquiring a profit—or has the trader in view the object of rendering gratuitous assistance to some object outside his business, and are the expenses necessary to the acquirement of the particular profit which is sought to be taxed ? When the matter is thus dissected it will be seen that the words " wholly and exclusively " do not bear a restricted meaning, and that they have in view solely the *intentions of the trader*. Moreover it is clearly inequitable and contrary to the intentions of the legislature to tax a particular profit without allowing the expenses, without which that profit could not have been made. The words " laid out or expended " mean by the *trader assessed*, and do not take cognisance of any indirect and unintended benefit.

It may be urged that the decided cases prevent the admission of what are in some instances legitimate trading expenses, but, apart from items so specifically determined, and other expenses inadmissible in terms of law, there is considerable room for argument. The discrediting of *Watney* v. *Musgrave* has disposed of the extreme interpretation of " wholly and exclusively," and, combined with the comparative significance of the word " necessarily " in Schedule E, the hitherto neglected notice of the word " trade," and the absence of pure philanthropical intentions of the trader, render the admissibility of ordinary legitimate expenses a question of very material reason.

The case of *W. Smith* v. *Incorporated Council of Law Reporting* (1914), (p. 289), introduces a reasonable interpretation, and it was laid down that the Commissioners were to determine the question of *fact* " is the money wholly and exclusively " laid out for the purpose of the trade, the Court's

duty being merely to decide if there was evidence to support such findings.

The application of the words in question to deductible allowances settled in the Courts, will be seen in the alphabetical list of Deductible Expenses (*post*).

DEDUCTIBLE EXPENSES AND SUBJECTS OF ASSESSMENT.

ANNUAL VALUE.

A necessary expense of a trading concern is that of accommodation for its works, offices, etc., and, where rent is paid, that rent forms a deductible expense. If, however, the net Schedule A assessment (*i.e.* the amount on which tax is *paid*) exceeds the rent, the net Schedule A assessment is substituted as the deduction. Thus, if a rent of £100 is paid and the Schedule A assessment is £120, the occupier is presumed to have a beneficial occupation, *i.e.* that he pays no rent in regard to the value represented by the excess of the Schedule A assessment over the rent. The Schedule A tax has to be paid by the occupier, who is entitled to deduct it when paying his rent, but such deduction is restricted to tax on the amount of rent, thereby leaving the occupier to bear tax on the said excess as if he were owner of a portion of the premises represented by the excess. This places the occupier on an equal footing (in regard to such excess) with an occupier who is also owner. The latter bears tax under Schedule A, which tax is on "profits" of annual value, and, therefore, when the Schedule D assessment is being arrived at, a deduction is allowed of the amount of the net Schedule A assessments. The benefit of this provision is, peculiarly, not universally claimed (one of the largest trading concerns in the country having omitted to claim), and when it is considered that the Schedule A assessments may amount to thousands of pounds the importance of the point is obvious.

In the case of a beneficial occupation the practice is to write back the rent and allow the full net Schedule A assessment as a deduction.

Authority for Deduction.—There is no specific legal provision for the deduction, but there is no distinction in effect between the various Income Tax Schedules, all of which form a tax on profits, and if a trader who owned his business premises, and therefore pays and bears his tax under Schedule A, were not allowed to deduct the amount of the Schedule A assessment from his business profits for assessment under Schedule D, double taxation would be incurred.

It is provided by Rule 5 to Cases 1 and 2, Schedule D, that:

> "The computation of tax shall be made exclusive of the profits of gains arising from lands, tenements, hereditaments, or heritages, occupied for the purpose of the trade or profession."

In *General Hydraulic Power Co., Ltd.* v. *Hancock* (1913), (*post*), SCRUTTON, J., in commenting on LORD HERSCHELL'S opinion (*ante*), against the *right* to the deduction, stated that:

> "I hesitate to rush in where Lord Herschell had some doubts about treading, but it does seem to me that if the question should become material on some future occasion it may very well be considered whether the right to make the deduction does not follow from the express words of the second rule (now fifth rule) applicable to both the first and second Cases under Schedule D. . . . It is, I think, quite possible to read that as a direction that when you assess the profits of the trade carried on on lands, you are to assess the profits of the trade and the profits and gains arising from lands separately, and shall not include in the profits from trade profits or gains arising from lands."

It may be, however, that Rule 5 was intended to apply to Schedule B, which is a tax on the profits of occupation, and a trading concern having extensive lands which could be cultivated without detracting from their use in the ordinary course of the business, could be charged under Schedule B on the profits of the land, which profits would then be omitted under Schedule D. The inclusion of tenements and hereditaments may be explained as covering, *e.g.* farm buildings, and Schedule B in terms assesses the concerns charged under Schedule A.

In *Russell* v. *Aberdeen Town and County Bank* (1888) (*c*) LORD HERSCHELL stated that "it is not disputed that the

(*c*) 13 App. Cas. 418; 53 J. P. 244; 58 L. J. P. C. 8; 59 L. T. 481; 2 Tax Cas. 321.

annual value of premises exclusively used for business purposes is properly to be deducted in arriving at the balance of the 'profits and gains,'" but that "there may be a question where the right to make that deduction is to be found." He was of the opinion that it is allowed, "because it is an essential element to be taken into account in ascertaining the amount of the balance of the profits."

It is also provided by Rule 5 (2) of Cases 1 and 2 of Schedule D, which assumes the allowance of Schedule A assessments :—

> (2) Where in estimating the amount of annual profits or gains arising or accruing from any trade, profession, employment, or vocation, and chargeable to tax under this Schedule, any sum is deducted on account of the annual value of the premises used for the purposes of such trade, profession, employment, or vocation, the sum so deducted shall not exceed the amount of the assessment of the premises for the purpose of tax under Schedule A as reduced for the purpose of collection (*d*).

RULE 5 (1) provides that no allowance shall be made for premises situate outside the United Kingdom and used for business purposes.

RULE 5 (2) also provides that the allowance above shall not apply to **mills, factories, or other similar premises.** The effect of this in practice, is that the *gross* Schedule A assessment (*i.e.* before deduction of repairs) is allowed. This additional allowance is intended to be for depreciation of building, see p. 164.

See *Largo & Lundin Links Gas Co.* v. *Smith* (1922), where it was held that the *gross* only applies to the part of a concern which consists of mills, factories or similar premises.

In the case of a trading concern with a trading year ending other than on the 5th April (or 25th or 31st March) the Schedule A assessment applicable to the *trading* year has to be deducted. Assume that the trading year is to 31st December, and that the Schedule A assessments were :—

	£	
1919–20 . .	500	
1920–21 . .	500	
1921–22 . .	500	(increased to £800 from 1st Oct., 1921).

(*d*) See p. 26. This refers to deduction for repairs, and, therefore, the allowance to be made from the Schedule D assessment is the *net* Schedule A assessment.

The Schedule A assessment for 1921–22 would be £500 + ½ of £300 = £650, but the deduction from the trading year's profits to 31st December, 1921, would be £500 + ¼ of £300 = £575.

No. III. of Schedule A.—In concerns under No. III. of Schedule A, such as mines, waterworks, etc., the question of deduction of annual value assessed under Schedule A does not arise, as no separate Schedule A assessment is made on such concerns, which are assessed as an entity on the profits alone.

Basis of Calculation.—The question as to whether the annual value to be deducted should be calculated on the average of the three preceding years, or based on the net Schedule A assessments of the current year, was raised in *General Hydraulic Power Co., Ltd.* v. *Hancock*, [1914] (*e*), when it was decided that the former was the correct basis. The company's Schedule A assessments had increased during the said three years, so that their contention that the basis should be the current year, would have resulted in an increased allowance. The Schedule D assessment in question was for the year 1911–12, and the actual profits and Schedule A assessments were as follows :—

	1908.	1909.	1910.
Profits . . .	65,370	66,327	69,773
Deduct Schedule A .	21,449	21,616	21,616
	£43,921	£44,711	£48,157

This gives an average profit of £45,596.

The net Schedule A assessments for 1911–12 were £24,096, and if this were deducted instead of the average of the three preceding years, the assessment would be £43,060. A comparison of the Schedule A assessment, in the case of an owner-occupier, with the rent paid by a tenant-occupier, disposes of the question in equity, as rent, being a trade expense, is unquestionably deductible on the average. The Crown's contention that the average amount should be deducted was

(*e*) 2 K. B. 21 ; 30 T. L. R. 203 ; 6 Tax Cas. 445.

allowed by the Court, SCRUTTON, J., stating that "If the appellants rented these premises, instead of owning them, there is no doubt that the method adopted by the Crown would be the right method." Moreover, under the average calculation, if the premises were rented, *e.g.* in 1908 and 1909, and purchased in 1910, the assessment would in no way be affected, assuming the rent and Schedule A to be equal.

Partly used as Dwelling-house.—Where the dwelling-house is partly used for business purposes a limited deduction is permissible in respect thereof.

Rule 3 to Cases 1 and 2 of Schedule D, enacts that no deduction shall be made :

> "for the rent or value of any dwelling house or domestic offices or any part thereof, except such part thereof as is used for the purposes of the trade or profession."

The Rule then provides that the sum deducted for the part used for business purposes shall not exceed two-thirds of the annual value of the whole. Sec. 31 of the Finance Act, 1922, amended this by qualifying the two-thirds limit (see *post*).

The above provisions, which, in practice, cover Rent and Schedule A, arise in the case of *e.g.* a Doctor or Dentist, and the ascertainment of the portion of the Rent or Schedule A assessment to be deducted proceeds on the basis of the portions and relative values of the rooms devoted to business, but an important point arises in the case of a professional man such as a Dentist, who, in order to secure and maintain a good class of client with the consequent high fees—and, therefore, *increased* profits *on which Income Tax is paid*—occupies a house in a good-class neighbourhood with a high rent, a house which, in accordance with the income of the Dentist, would be entirely out of proportion from the point of view of residence only. Assuming that one-fourth of the premises is used for business purposes, it would *primâ facie* follow that one-fourth of the rent or net Schedule A assessment would be deductible, but this is subject to a material qualification as, in the above case, consideration should be paid to the actual expense of the

house attributable to the business—the actual expense incurred for the purpose of acquiring the profit. If the rent or net Schedule A assessment of the house is £60, the maximum allowance would be £40, and the *primâ facie* allowance on the basis of relation between business and residential portions (as above) £15. Assuming, however, that the residential part of the house is larger than would otherwise be necessary, or that the exclusiveness of the situation of the house is such as to result in high rents, the Dentist would be entitled to claim deduction of such part of the rent as is not represented by normal residential necessity, a question which would be one of fact to be determined on the particular circumstances of the case.

Public Houses and Hotels.—Prior to 1921 the two-thirds limit operated harshly, in practice, in the case of Public Houses and Hotels, but this harshness proceeded from a misconstruction of Rule 3 (*ante*). The proprietor of such a business does not rent "a dwelling-house, part whereof shall be used by him for the purposes of any trade," but he rents *business premises partly used for the purposes of a dwelling-house,* which is an entirely different proposition, and one not in the contemplation of Rule 3, which merely refers to cases such as Dentists and Surgeons, thus leaving the deduction for rent or net Schedule A assessment to be the full amount thereof less *primâ facie* the value of the portions used by the proprietor as his residential quarters. In addition to the illegality of applying Rule 3 to Public Houses and Hotels, the inequity was very pronounced, as in the case *e.g.* of a Public House rented at £200, the residential quarters may not be worth more than £13 a year, whereas the operation of Rule 3 would assume such value to be a minimum of £66, an absurdity which is heightened by the comparative smallness of the profits of such a business (see LORD MACNAGHTEN, *post*).

Sec. 31 of the Finance Act, 1921, allows the Commissioners to permit a larger amount than two-thirds if the "circumstances" of the particular case merit it (p. 84).

See *Gillatt and Watts* v. *Colquhoun* (1884) (p. 135).

Tied Houses.—See *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce,* [1915] H. L., at p. 106.

In *Russell* v. *Aberdeen Town and County Bank* (1888) (*ante*), the bank owned the buildings in which its business was carried on, and part of the buildings was occupied as residences by the bank managers and agents. It was held that the bank could deduct the Schedule A assessments on the whole value of the premises.

LORD HERSCHELL stated that the portion of the bank in which the Manager resides is as much used for the purposes of the business of the bank, as if it were used in any other way, as the manager resides there for the purposes of the bank.

His Lordship, in referring to a contention that the whole of the building is a dwelling-house, said that :

> " I do not think that the word ' dwelling-house ' is here used in any such sense ; and that a bank or a manufactory or a warehouse becomes a dwelling-house, because some servant of the trader resides in that building for the purposes of the trade."

LORD FITZGERALD expressed the opinion that the occupation of certain rooms for purposes of protection does not convert the premises into a dwelling-house.

LORD MACNAGHTEN said that " I think the expression ' dwelling-house ' in that Rule (Rule 3 to Cases 1 and 2 of Schedule D, *ante*, p. 83), means a house in which the person, liable to pay income tax, dwells in the ordinary sense of the word."

Clergymen.—It is provided by Rule 2 (*b*) of the General Rules to all Schedules that an allowance shall be made for such part of the rent (not exceeding one-eighth) paid for a dwelling-house when part is used mainly and substantially for the purposes of the duty as clergyman or minister. Where no rent is paid there is deemed to be a rent equal to the Schedule A assessment.

ANNUITIES.

(See Insurance Co.)

ALLOWANCES.

Voluntary allowances of the nature of gifts, such as sums paid towards the support of relatives in straitened circumstances, are not admissible as deductions in computing liability, or " total income " for relief, etc. (see p. 341).

ADVERTISING.

The expenses of ordinary advertising are allowed in practice, but not the preliminary expenses in respect of advertisements on the commencement of a business nor extensive advertisements on the opening of a new branch. In the case of businesses which necessitate enormous and continuous expenditure on advertisements, the full cost thereof is admissible.

See *Ward* v. *Commissioner of Taxes* (*N. Zealand*) (1922).

AGENTS.

(See " Foreign," p. 203.)

BAD DEBTS.

Bad debts are deductible (Rule 3 to Cases 1 and 2, Schedule D. This Rule also (p. 84) admits doubtful debts, but in practice it is not of general use :

> It allows doubtful debts to the extent that they are estimated to be bad, and in the case of the bankruptcy or insolvency of a debtor, the amount which may reasonably be expected to be received on any such debt shall be deemed to be the value thereof.

Reserves.—Sums placed to reserves for bad and doubtful debts are not allowed, but bad debts actually written off form the deduction in practice. While an increase in a bad debt reserve is thus written back a decrease forms an allowable deduction as debts have been paid out of a *taxed* reserve.

Under Rule 3 the practical equivalent to a reserve may be deducted, but it is usually required that the allowance for doubtful debts shall not be in the form of a percentage deduction on all debts but that the doubtful debts shall be treated individually. When the doubtful debts are actually realised

any (*a*) excess or (*b*) deficiency over the amount deducted under Rule 3 should be accounted for by charging (*a*) or deducting (*b*) from the next account. It is of obvious desirability that an allowance for doubtful debts should be claimed, as otherwise tax would be paid on profits which may never be realized and an *ultimate* full deduction for bad debts is not comparable with a *present* allowance.

See *Gleaner & Co., Ltd.* v. *Assessment Committee* relating to Jamaica.

Bank.

(See as to "Amalgamation," p. 79; as to "Agents," p. 203 (Foreign); and as to Deduction of Tax, p. 388.)

Under Rule 3 to Schedule C and Rule 14 to Cases 1 and 2 of Schedule D, a bank carrying on a *bonâ fide* banking business in the United Kingdom shall be relieved by repayment, or otherwise, from tax under Schedule C (p. 369), in respect of interest on securities which are proved to the Special Commissioners to represent subscriptions by the bank to any Government loan, issued before or after the passing of the Act, for the purposes of the war. The interest is to be included in the Schedule D assessment under Case 1.

Bonus.

A company raised money and agreed to pay the lenders, on the repayment of the loans, a bonus of 10 per cent. It was held that this could not be deducted. *Arizona Copper Co.* v. *Smiles* (1891) (*f*).

Bookmakers.

(See p. 63.)

Books.

The expenditure on new books included in preliminary expenses is admitted. (See also "Preliminary Expenses," p. 304.)

Brewing.

Many contentious points have arisen in connexion with the assessments on brewing.

(*f*) 29 Sc. L. R. 134; 3 Tax Cas. 149.

Tied Houses.—Brewers make a very extensive practice of acquiring "tied houses," *i.e.* licensed premises which are let, at rents considerably less than the real annual value, to tenants who covenant to purchase beers, etc., solely from the particular brewery, thus materially increasing the sales of the brewery and consequently the profit. Income Tax is paid on the whole of the latter, and deduction is now allowed by *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce*, [1915] H. L. (*g*), (*post*) of the following expenses incurred by the brewer in connexion with the maintenance of "tied houses," which expenses (where applicable) of houses *managed* by servants of the brewer were always allowed :—

(1) Repairs.

(2) Licence Insurance and Fire Insurance Premiums.

(3) Licences and Rates paid for tenants.

(4) Legal costs (as *post*, p. 107).

(5) Difference between the net Schedule A and the rents received from the tenants (*h*). In practice, the *gross* Schedule A assessments are allowed as one of the Law Lords referred to the gross Schedule A although that point was not before the Court, as the case stated only referred to the *net* Schedule A assessments (see p. 95).

A deduction is also permitted for the Compensation Levy (*post*).

The existing commercial conditions applicable to brewing, render it practically impossible to carry on a successful brewing business without the possession of "tied" houses, as the number of "free" houses is so limited that the outlet for the brewery products would be strictly and very seriously limited if it were restricted to Public Houses other than those "tied," therefore it is commercially expedient and necessary that "tied" houses should be held as an integral part of the brewery machinery. Increased profits are obviously made by the use

(*g*) A. C. 433 ; 84 L. J. K. B. 417 ; 59 S. J. 144 ; 112 L. T. 651 ; 31 T. L. R. 104 ; 6 Tax Cas. 399.

(*h*) See "Annual Value," p. 95.

of "tied" houses, and as tax has to be paid on such increased profits it is difficult to reconcile, in equity, the disallowance of the expenses in question. In *Smith* v. *Lion Brewery Co., Ltd.*, [1911] H. L. (*i*), which dealt with the Compensation Levy in respect of "tied" houses (*post*), a payment which, though compulsory in law is no more compulsory than the above, refused allowances so far as regards commercial necessity. Farwell, L.J., expressed the following pointed opinion: –

> "To put a concrete case: brewers sell x barrels without tied houses and make £1000 yearly profit; they sell $x + y$ barrels with tied houses and make £1500 profit; the payment of the levy in respect of these tied houses was necessarily made for the purpose of enabling them to sell the y barrels, and the Crown, claiming tax on the £500 resulting as the profit therefrom, or, in other words, claiming a share of the profits (for the tax is a part of the profits) is bound to allow a deduction for a compulsory payment without which these particular profits could never have been earned at all."

Brewers charge their "tied" tenants more for beers, etc., than could be obtained from a "free" tenant, and in this way also an increased profit, *which is taxed*, accrues. The discounts allowed by brewers are not uniform throughout the country, one large brewery gave 20 per cent. to "tied" tenants and 22½ per cent. to "free" tenants, whilst in some cases "free" terms have been 30 per cent. "Tied" terms may be as low as 15 per cent.

(See p. 16 for Schedule A assessments in relation to Licence Duty.)

"Managed" *v.* "Tied."—In the case of managed houses the admission of the expenses was not questioned, but, from the point of view of the brewer, there was no material distinction. A "tied" house is, in effect, held by the brewer in the course of his business and, on a change from "tied" tenancy to management, the expenses refused in the former become automatically allowable in the latter. A brewer, on

(*i*) [1909] 2 K. B. 912; 73 J. P. 447; 78 L. J. K. B. 1089; 101 L. T. 145; 53 Sol. Jo. 696; 25 T. L. R. 748, C. A.; [1911] A. C. 150; 80 L. J. K. B. 566; 104 L. T. 321; 5 Tax Cas. 568.

acquiring a Public House, has two available methods of utilizing it for the carrying on of his trade (trade is not restricted to *producing* but comprises *selling*) and he often selects tenancy, it being obvious that a tenant, having an interest in the business varying with the amount of the trade, may be relied upon to endeavour to extend the sales.

The Crown contended :—

(*a*) That the expenses were not "wholly and exclusively" laid out for the trade of the brewery within Rule 1 to Cases 1 and 2 of Schedule D (p. 84) (now Rule 3), but were partly expended for the benefit of the tenant, as the trade of the "tied" house was the tenant's trade. (See "wholly and exclusively," p. 93, and *Usher's case*, post.)

(*b*) That the brewers did not *occupy* the "tied" house within the meaning of Rule 3 (p. 84), which limited allowance for repairs to premises "occupied for the purpose of such trade."

(*c*) That the relation of the brewers to the "tied" house was only that of landlord.

This latter contention is discounted by the fact that on a Public House losing its licence, the premises are disposed of as soon as possible, thus proving that they are only acquired in the course of and for the purpose of the trade, and not as investments.

In *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce*, [1915] H. L. (*k*), the company claimed the following "tied" house expenses.

(*a*) Repairs to "tied" houses £1,004 0*s.* 10*d.*

(*b*) Difference between rents of leasehold houses or Schedule A assessment of freehold houses on the one hand, and rents received from "tied" tenants on the other hand £2,134 14*s.* 6*d.*

(*c*) Fire and licence insurance premiums £90 7*s.* 6*d.*

(*d*) Rates and taxes £38 7*s.* 6*d.*

(*e*) Legal and other costs £56 7*s.*

(*k*) A. C. 433 ; 84 L. J. K. B. 417 ; 59 S. J. 144 ; 112 L. T. 657 ; 31 T. L. R. 104 ; 6 Tax Cas. 399.

As regards (*a*) the tenants were under legal obligations to repair but did not do so. Had the brewers availed themselves of their legal remedy the tenants would no doubt have left the houses or required a reduction in the rent.

With (*b*) the item was produced by the brewers letting the houses at considerably less than their full annual value as "free" houses.

The legal costs in (*e*) included the following :—

(1) Renewal of publicans' licences.

(2) Surrenders, terminations, and assignments of leases, or tenancy agreements thereof.

(3) Charges in connexion with the assessments of "tied" houses for poor rate, including attendances before assessment committees and obtaining reductions.

(4) General charges in connexion with "tied" houses relating to complaints against tenants, advising the brewery as to thefts of beer, etc.

(5) Charges relating to the brewers' position as to getting a full licence, and as to his proposal to give up a claim to compensation, on getting a full licence.

In the Divisional Court the above items were allowed, except repairs which were held to be decided by *Brickwood & Co.* v. *Reynolds* (*post*), but in the Court of Appeal the PRESIDENT OF THE PROBATE, DIVORCE AND ADMIRALTY DIVISION held that all the expenses were inadmissible as *Brickwood & Co.* v. *Reynolds* (with which he agreed) was binding on (*a*), that (*b*) was more accurately described as losses of rents or annual values of freehold and leasehold properties than as such disbursements or expenses as aforesaid, and that as the rents of these tied houses did not come into or form part of the trade profits of the brewery, sums by which the rents were reduced or allowances made out of such rents could not be debited. (Rents received, being taxed under Schedule A, could not, however, in any case be brought into the profits for Schedule D purposes.) The PRESIDENT held further that the agreement to accept the lower rents could not be held to be within the words

" wholly and exclusively " laid out for the purposes of the trade of the company, as the disbursements were laid out or expended in part to increase the profits of the tenants' trade and in part also to maintain and increase the value of the good-will of the business.

It was urged by the Crown, and accepted by his Lordship, that if the company's claim were allowed, property of the value of £2,134 would escape taxation as the tenant is legally entitled to deduct, in arriving at his Schedule D assessment, the net Schedule A assessed on the " tied " house less the rent (see " Annual Value," p. 95). It does not, however, seem correct to look at the indirect effect on the assessment of a distinct person, and, moreover, in practice the loss would be practically non-existent as almost all publicans (who seldom keep accounts) return an estimated profit in round figures, and are accordingly assessed on round figures in excess of the return, thus ignoring any deduction in respect of the net Schedule A.

It has been advanced in regard to the claim for Fire Insurance premiums that the allowance for repairs under Schedule A is intended to include Fire Insurance premiums, but this argument is a fallacy, as the deduction from a trader's profits under Schedule D in respect of Annual Value (see p. 95) is restricted to the *net* Schedule A assessment, thus leaving repairs and other items in the $\frac{1}{6}$th deduction under Schedule A, to be deducted solely under Schedule D.

The remaining items were also held to be inadmissible.

The above case was stated to cover repairs executed indifferently to the business part of the premises and the living quarters of the tenant, as in *Brickwood & Co.* v. *Reynolds*, thus giving the Crown the opportunity of contending that the repairs were not " wholly and exclusively " incurred for the purpose of the brewers' trade.

The case went, however, to the House of Lords, where the *whole* of the items were unreservedly allowed in wide terms. The decision has affected a revolution in Income Tax deductible

expenses, and its vitally important bearing thereon is dealt with at p. 90.

The rulings in the House of Lords on profits generally are given at p. 91, while the decisions on actual items are dealt with below. In the first place LORD LOREBURN held that the case was practically decided by *Smith* v. *Lion Brewery Co., Ltd.* (1911), *ante*, which laid down *inter alia* that expenses paid to keep going another business "the success of which was essential to their own" were deductible, and that the said decision proceeded on this point, not on the fact of the compensation levy being statutorily payable, as it is immaterial whether the necessity to pay arises by statute or from business considerations. LORD ATKINSON supported the latter, and stated that when a trader creates in himself or acquires a particular estate or interest in premises wholly and exclusively for the purpose of using that interest to secure a better market for his trading commodities, money devoted to discharging a liability imposed by statute on that state or interest, or upon him as owner of it, should be taken to have been expended by him wholly and exclusively for the purposes of his trade. LORD SUMNER held that where the whole and exclusive purpose of the expenditure is the purpose of the expender's trade, and the object which the expenditure serves is the same, the mere fact that to some extent the expenditure enures to a third party's benefit, such as that of the publican, or that the brewer incidentally obtains some advantage, say in his character of landlord, cannot in law render the expenditure inadmissible as not being wholly and exclusively laid out for the brewer's trade.

Repairs.—The tenant was legally bound to repair, but as a matter of commercial expediency it was found to be advisable for the landlord to repair in order to avoid loss of tenants, etc. Rule 3 provided that deduction for repairs was only in respect of premises "*occupied* for the purpose of such trade," but LORD LOREBURN held that this only applied to the case of a man so occupying, and that the brewer does not occupy a tied house, therefore the Rule *did not apply at all*, but the repairs

are determinable, as an allowance, by the general provisions allowing deductions of expenses " wholly and exclusively " laid out for the purposes of the business.

In allowing deduction of repairs *Brickwood and Co.* v. *Reynolds* (1897) (p. 113) was overruled.

Difference between Rents received and Schedule A. —EARL LOREBURN stated that on ordinary principles of commercial trading the loss arising from letting tied houses at reduced rents was obviously a sound commercial outlay, and, therefore, allowable. LORD ATKINSON pointed out that under *Russell* v. *The Town and County Bank* (1888) (*l*), a trader who owns and occupies premises in which he carries on his trade is entitled to deduct the Schedule A, and that if the houses had been occupied by a manager instead of a tenant there could have been no question of non-allowance, but that there is no real difference in principle between the case of a manager and a tenant, as the brewer ascertains his profits in the same manner, *i.e.* by deducting from the receipts the cost of earning them. With the manager, part of the cost is salary, and possibly commission, while with the tenant it is the difference between rents received and Schedule A or rents paid. " For the purpose of striking the balance of profits and gains, the two cases are in principle indistinguishable." LORD PARKER ruled that the Schedule A to be deducted is not the *net* Schedule A, *i.e.* after reduction for repairs, but the gross Schedule A. The case stated specifically referred to the *net* Schedule A, and the judgment of the other Lords allowed merely the " Schedule A," which would presumably be the *net* Schedule A, as claimed under the case, and which would be consistent with equity, as allowance of full repairs and of the gross Schedule A—which is the assessment under that Schedule on which tax has been paid, *plus* the repairs—would give a double allowance for repairs. In practice, however, deduction of the *gross* Schedule A is not questioned. His Lordship stated, that in default of statutory provision to the contrary, the *gross* Schedule A

(*l*) 13 App. Cas. 418 ; 2 Tax Cas. 321.

should be adopted, and he held that sec. 9 of the Finance Act, 1908 (now Rule 5 to Cases 1 and 2), which provided that the deduction for the annual value of premises *used for the purposes of the trade* shall not exceed the *net* Schedule A, was inapplicable, as the premises were not used for the purpose of the brewing business within that section which refers to premises in the possession of the trader.

Fire and Licence Insurance Premiums and Rates.—LORD LOREBURN allowed these items "upon the same grounds as repairs."

Cases.

Premiums for Leases.—*Watney* v. *Musgrave* (1880) (*m*).

The cases bearing on "tied" house deduction are of a particularly conflicting nature as regards the dicta delivered. *Watney* v. *Musgrave* (1880), referred to at p. 86, was the origination of the "tied" house question, and the dicta therein has been subsequently discredited. The conditions in the brewing industry as regards "tied" houses were, at that date, less predominant and the case involved the question of deductibility on account of gradual exhaustion of premiums paid for leases of Public Houses for letting to "tied" tenants, and was decided in favour of the Crown. The following example given in the case shows the effect of the premium :—

The appellants had recently bought the lease of a Public House for 30 years, for which they paid a premium of £1300, and covenanted to pay the landlord a rent of £105 a year. Such lease contained the usual covenants for the lessees to repair, &c. The appellants let such Public House to a tenant, who under his agreement is bound to buy of the appellants all beer to be sold in the house, and assuming that their gross profit from such sale would amount to £60, which profit they could not have made unless they had expended £1300 in purchasing the lease, they claimed that the balance of profits

(*m*) 5 Ex. D. 241 ; 44 J. P. 268 ; 49 L. J. Ex. 493 ; 42 L. T. 690 ; 28 W. R. 491 ; 1 Tax Cas. 272.

and gains on which they were to be assessed should be less than that sum by £43, being the portion of the said sum of £1300 which had been exhausted during the year by reason of one year of the term having run out, namely, one-thirtieth of the said sum of £1300. In the assessment to the income tax the £60 profit from the sale of the beer was included.

The dicta of KELLY, C.B., is given at p. 86.

HAWKINS, J., held that the house was distinct from the trade which consists of manufacturing and selling the beer to the "tied" customer, and that deductible expenses are strictly incidental to production, but he admitted that the costs of conveying the beer to the customer might be deductible, as if the customer fetched the beer from the brewery the price charged to him would be less than if the beer were delivered at the customer's place of business.

The above case, owing to the adverse comments on it in subsequent cases (see p. 87), is of no material support, although it has been extensively relied upon by Surveyors of Taxes on appeals before the Commissioners, and in the dicta of Mr. Justice Hawkins it is stated that "The trade consists to the brewer in manufacturing the beer, in selling it to the customer" —but cognizance was not taken of the fact that the expense in question was *necessary* to the acquirement of the customer, as if Watney's had not purchased a particular house another brewery would have stepped in, thus Mr. Justice Hawkins' own dictum that the trade consists partly and necessarily of selling is contrary to the decision of the case.

(See *Gillatt and Watts* v. *Colquhoun*, at p. 135.)

Losses on Loans.—*Reid's Brewery Co., Ltd.* v. *Male* (1891) (*n*). The company made loans to customers on the security of the Public Houses, and if the security did not realize the amount of the loan the company wrote off the loss as a bad debt. It was held that the amount of such loss formed a deductible expense.

(*n*) 2 Q. B. 1; 55 J. P. 216; 60 L. J. Q. B. 340; 64 L. T. 294; 39 W. R. 459; 3 Tax Cas. 279.

POLLOCK, B.: "A question has arisen as to whether this money-lending business is to be considered as an independent business or as part of the business of the brewers. If it had been or if it is a separate business seems to me to be immaterial, because I think it would be included within the provisions of sec. 101 of the Income Tax Act, 1842 (now Rule 13 of Cases 1 and 2 of Schedule D), and that the Appellants would be entitled to deduct the profits acquired in one of the concerns and set them off against the excess of the losses sustained in the other concerns, but to my mind this really is one business. I do not think anybody who reads this case and is at all acquainted with the custom of brewers in large towns can suppose that this particular firm or company carry on business as money-lenders only; but what they really do is to carry it on as an adjunct, ancillary to and a very advantageous adjunct to their business as brewers.

"I think myself it would be a fallacy to call this money . . . capital invested.

"It is capital used by the Appellants, but used only in the sense that all money which is laid out by persons who are traders, whether it be in the purchase of goods be they traders alone, whether it be in the purchase of raw material be they manufacturers, or in the case of money-lenders, be they pawnbrokers or money-lenders, whether it be money lent in the course of their trade, it is used and it comes out of capital, but it is not an investment in the ordinary sense of the word." (See also p. 87, as to Baron Pollock's disapproval of *Watney* v. *Musgrave*.)

Damages.—See p. 89.

Repairs.—*Brickwood & Co.* v. *Reynolds* (1897), C. A. (*o*). This case has been of considerable moment *but was overruled* by *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce* (1915) (p. 106). A deduction in respect of the excess of the cost of repairs of a "tied" house over the one-sixth allowed under Schedule A is inadmissible. The question was subsequently altered by sec. 9 of the Finance Act, 1898 (p. 96), now Rule 5 to Cases 1 and 2 of Schedule D, which restricts the deduction in respect of Annual Value to the *net* Schedule A assessment, leaving the *whole* cost of repairs to be dealt with under Schedule D., except in the case of "mills, factories and similar premises when the

(*o*) [1898] 1 Q. B. 95; 62 J. P. 51; 67 L. J. Q. B. 26; 77 L. T. 456; 46 W. R. 130; 14 T. L. R. 45; 3 Tax Cas. 600.

gross Schedule A assessment is allowed in addition to repairs" (p. 97). See also p. 104.

An important point in connexion with this case is that the repairs were executed indifferently to the business parts of the house and the living quarters of the tenant (see p. 108), and a further vital factor in this extensively relied-upon case, is that no distinction from *Watney* v. *Musgrave* could be found by Mr. Justice Ridley, and the adverse judicial opinions on the latter (*ante*) weakened the authority of *Brickwood & Co.* v. *Reynolds.*

BARON POLLOCK stated that:

> "Before you can get at the profits you must look at the whole that precedes the making of the profits, which is connected with the expense of producing the article, and also the expense of distributing and keeping the accounts and other expenses which are necessary for the purpose of a trade or manufacture."

This dicta assumes that a "tied" house is the limit of distribution by the brewer, just as a retail shop would be the limit in general trades, but the "expense of distributing" necessarily covers the expense of acquiring the power to distribute, or, in other words, all expenses necessary to secure the custom of the tenant.

RIDLEY, J., could not distinguish the case from *Watney* v. *Musgrave* (p. 111).

SMITH, L.J., agreed with the statement of HAWKINS, J., in *Watney* v. *Musgrave*, that the trade of the brewery and the trade of the Public House are distinct. His Lordship further stated that the requirement of Rule 3 to Cases 1 and 2 of Schedule D, "any sum expended for repairs of premises occupied for the purposes of such trade" clearly meant occupied by the person assessed for the purposes of his trade.

> "It is impossible in my judgment in this case, after hearing the facts, to allege that the whole of this money for repairs of this public-house was laid out exclusively for the trade of the brewer; it was laid out for many other things too."

Mr. JUSTICE RIDLEY was of the opinion that it was "startling . . . to see how a contrary decision . . . can be supportable without carrying us far away from anything in reason," and he formulated a comparative example of a brewery company, having spare capital, and deciding to build a small town round the brewery, and tie the tenants to purchase beers solely from the brewery. There would, in his opinion, be just as much occupation by the brewery as in the case of "tied" houses, and the motive of the expenditure would be the same. There is, however, a vital distinction, as the said houses would obviously, quite apart from the trade in the brewery products, not only be self-supporting, but yield a profit, and command practically open-market rents, whereas with "tied" houses a nominal rent is all that can be obtained, and they do not therefore in themselves yield a profitable return.

The case of *Brickwood & Co.* v. *Reynolds* has been a strong argument as being binding against allowances for repairs of "tied" houses, but in *Smith* v. *Lion Brewery Co., Ltd.* (*post*), LORD ATKINSON, in referring to a dicta in *Brickwood & Co.* v. *Reynolds*, that the repairs being executed indifferently to the business parts and living quarters of the tenant were not "wholly and exclusively" laid out for the purpose of the brewers' trade (within Rule 3 to Cases 1 and 2 of Schedule D), stated that "It is clear, therefore, in my view that it was not expressly decided in this case that the money expended on the repairs executed on the portions of the houses used for trade purposes could not be deducted."

Compensation Levy.—*Smith* v. *Lion Brewery Co., Ltd.* (1911), H. L. (*p*). This case, which determined that a deduction could be made in respect of the legally compulsory Compensation Levy under the Licensing Act, 1904, cannot be cited as a strong comparative case against the Crown, owing to the

(*p*) [1909] 2 K. B. 912; 73 J. P. 447; 78 L. J. K. B. 1089; 101 L. T. 145; 53 Sol. Jo. 696; 25 T. L. R. 748; 16 Manson, 326, C. A.; affirmed [1911] A. C. 150; 80 L. J. K. B. 566; 104 L. T. 321; 27 T. L. R. 261; 5 Tax Cas. 568.

diversity of judicial opinion, but it is of particular importance owing to the many and extensive dicta on the "tied" house question. The Divisional Court refused the deduction, the Court of Appeal allowed it (KENNEDY, L.J., dissenting), and the House of Lords sustained the judgment of the Court of Appeal, the opinions being equally divided.

The findings in this case occupied a most important position in the decisions, and the Commissioners found that the Company:

> "Are as part of their business and as a necessary incident to the profitable exploitation of such business, the owners of certain freehold licensed premises and also lessees of other licensed premises, all of which premises have been acquired by the Respondents and are held by them in the course of and solely for the purposes of their said business. The said premises are let by the Respondents to tenants who covenant to deal only with the Respondents in the way of their business, and in consideration thereof and the purchase of beers from the Respondents they pay a much less rent than the annual value of the premises would warrant. By these means and the possession and use of the said premises which are employed by the Respondents as substantially part of their plant or outfit necessary to carry on the business profitably the Respondents are enabled to earn and do earn profits upon which they pay the income tax and which without the said premises and their use in and for carrying on their business would be much less in amount.
>
> "The profits of the Respondents have always been greatly increased by reason of the employment and use of such premises in and for the purposes of the Respondents' business, and to enable the Respondents to earn the profits upon which they are assessed to the Income Tax the possession and employment as aforesaid of such premises are essentially necessary, and except for the purposes of and employment in their business of such premises, the Respondents would not possess them. They do not possess them as investments or for the purposes of investments. If any house loses its licence the Respondents as soon as possible get rid of it."

In the Divisional Court Mr. JUSTICE CHANNELL mentioned that *Watney* v. *Musgrave* (*ante*) contained observations which would not bear investigation (although the actual decision was right) and that:

> "The expenses necessary to sell it and exclusively for the purpose of selling it are undoubtedly deductible. If a brewer sets up a depôt at a distance from his main brewery for the purpose of increasing his sales, the annual expense of that depôt is to my mind clearly an expense deductible as exclusively incurred for the purpose of his business of selling beer.
>
> "I think that whatever is the annual expense to the brewer of having those tied houses is an expense incurred for the purpose of the sale of his beer, exactly as the expense of a depôt or the expense of an agent for selling the beer is an expense of his business."

The decision of Mr. JUSTICE CHANNELL was against the company as, in his opinion, the payment was not exclusively for the brewer's trade.

> "He (the brewer) sells those 100 barrels of beer at a wholesale price. His object is to secure that customer and to sell that 100 barrels of beer, and, as I have already said, so far as he incurs annual expense in order to sell that 100 barrels of beer I think he is entitled to deduct it. The tenant is there, and the tenant who buys the 100 barrels of beer at wholesale prices sells them at retail prices. In all probability he sells other things besides the beer; he may sell spirits and other things. His trade is a different trade. It is selling over again what he buys from the brewer, and selling other things besides."

It seems difficult to reconcile the above dicta with the facts of the matter, as it is admitted that the annual expense to the brewer of selling the beer is deductible, thus inferring, by the non-allowance, that the customer would still deal with the particular brewer if the tie were non-existent, a fallacy which is explained by the fact that the charge to a "tied" tenant is higher than to a "free" tenant.

In the Court of Appeal the MASTER OF THE ROLLS considered the payment in question to be essential to the earning of the profit, and he pointed out that the tenant could deduct his share of the Compensation Levy, and that every argument which goes to show that the retail seller of beer can deduct his share, applies with equal force in favour of the wholesale seller.

FARWELL, L.J., agreed with the allowance of the deduc-

tion in question, but admitted that the case was a difficult one, and said that :

> " The Income Tax Acts expressly forbid certain deductions which might be thought allowable before the true profits of a trade could be ascertained, but with this exception ' profits of a trade ' bears its ordinary signification as used by business men in business.
>
> " I cannot agree with Mr. JUSTICE CHANNELL'S statement that the payment is made for the purpose of insuring against the loss of the tenant's trade in which the brewery company is only indirectly interested. The payment is made because the legislature has compelled it as a term of the ownership of a licensed house, and it is worth the while of the company to acquire houses and pay it in order to increase their own sales of beer in which they have a direct interest, and out of which the Crown claims a share. The tenant makes his own profit by his retail trade, the brewer makes his by his wholesale trade ; the levy must be paid by each in his due proportion to enable those profits to be made, and out of each set of profits the Crown claims a share, and must allow proper deductions accordingly."

KENNEDY, L.J., held that the levy was primarily and partially a payment for the maintenance of the trade of the publican.

In the House of Lords the LORD CHANCELLOR was against the admission of the deduction, but held that on the findings of the case stated, it must be taken that the company owned the " tied " houses simply and solely to obtain a market for their beer, and it was essential to their trade to own them.

His Lordship pointed out that deduction was sought from the profits of the wholesale trade of manufacturing and selling *beer*, whereas the levy was expended to insure against loss of the retail trade, which, under the licence, was that of selling *beer, wines and spirits*. He did not think the levy was " wholly and exclusively " laid out for the brewer's trade which had nothing to do with wines and spirits.

> " In the second place it is only in the character of owners of a house that the Lion Brewery Company can be called upon to pay this levy at all. The share of the levy which they have to pay is proportioned to the interest they have in the house, and has no relation to their wholesale trade of manufacturing

and selling beer. They pay income tax for the house under Schedule A, not under Schedule D, and I cannot perceive how they can claim a deduction in the terms of Schedule D in respect of a property which is assessed under a wholly different Schedule. You cannot by saying that a man carries on the business of owning house property shift the method of assessing that property for income tax from Schedule A to Schedule D and still less, in my opinion, can you claim to take credit, by way of deduction from an assessment upon trade, for moneys paid in respect of ownership of landed property which is assessable under a different Schedule altogether."

EARL HALSBURY was in favour of the allowance, contending that the *facts* found in the case were binding on the Court, and he did not think :

"it is competent for us to go out of what has already been determined by the tribunal which the legislature has considered sufficient to determine the form in which such a question, if it arises, should be determined." "Under these circumstances it appears to me that it would land us in a very serious difficulty if in any question like this we were called upon ourselves to do that which is the action of a business man, to find out what exactly he may or may not treat as part of the adventure, part of that which is necessary to be carried on As to that matter (we being by the Act of Parliament confined to expressing our view whether by law such and such a deduction could possibly be made), I am of opinion that that is beyond us, and it has been decided for us by a competent tribunal. I decline, therefore, to enter into that question."

LORD ATKINSON decided in favour of allowing the deduction, and mentioned that :

"the findings of fact set out in the case stated are matters vital for consideration, if not conclusive, of the question raised." and that under the findings "it would appear to me impossible to contend, at least successfully, that these licensed premises were not acquired and let under the terms of these leases solely, wholly, and exclusively for the purposes of the trade of the Respondents as manufacturers and vendors of beer. They acquired the houses in order that they might let them to persons who must needs buy beer and they bind those persons to buy from them the beer needed."

"And it certainly would appear to me that where a trader deliberately acquires any particular interest in the licensed premises, wholly and exclusively for the purpose of using that

interest to secure a market for the commodities he manufactures, the money he must expend to satisfy the charge thus imposed is necessarily disbursed wholly and exclusively for the purposes of this his trade."

"Again, it is urged that the landlord pays his contributions as landlord and because of his proprietary interest in the premises, and not as trader, since he would be equally liable to it whether he traded or not. That, no doubt, is so, but in the present case the Company have become landlords and thus liable to pay the charge, for the purpose solely and exclusively of setting up the tied house system of trading. If the Company took under lease a plot of land to enlarge their brewery or took, similarly, premises in which to establish a depôt to sell their beer through an agent, the same criticism might be applied with equal force to the payment of the rent reserved by the lease. They would pay it as lessees, not as brewers. They would pay it whether they continued to brew or not. Yet under the provisions of the very rule relied upon in this case, they would be entitled to deduct the rent from the profits earned, and that, too, utterly irrespective of whether the receiver of the rent used it to pay for his support or for his pleasure, or even to set up a rival brewery."

His Lordship pointed out that the compensation levy is an expenditure which must be incurred in order to earn the receipts (which after the due deductions have been made, form the balance of the profits assessable to Income Tax), and may, therefore, be deducted.

The contention that the brewers' share of the levy cannot be held to be wholly and exclusively laid out in the interest of the trade in beer alone, as the tenant may sell wine and spirits which he is not "tied" to purchase from the particular brewer, was disapproved by his Lordship, who held that it mattered not to the brewer in respect of what trading, in addition to the trading in beer, the liability for the entire contribution is incurred, as, the brewers deliberately assuming liability for the landlord's share solely to get a market for their beer, the payment of the levy is a disbursement made wholly and exclusively for the purposes of their trade as vendors of beer. Unfavourable comments were passed by LORD ATKINSON on the reliance to be placed on *Brickwood & Co.* v. *Reynolds* in regard to its bearing on the present case. (See p. 115.)

The lack of unanimity in the case was pointedly referred to by LORD SHAW OF DUNFERMLINE, who stated that—

> "the opinions which your lordships have just delivered show such a radical and complete difference of opinion that my own position is one of great difficulty. My two learned brethren who have preceded me have expressed diffidence in differing from the LORD CHANCELLOR. My Lords, I express diffidence in differing from any one of your lordships and in expressing an opinion either on the one side or on the other."

His Lordship expressed the opinion that the decision must proceed upon the facts as set forth in the case, and further that in the interpretation of the words "wholly and exclusively laid out or expended for the purposes of such trade," the words "purposes of such trade" do not mean the motives animating the minds of the traders, but mean the purposes to and for which the money is applied and expended.

His Lordship was of opinion that the levy was expended for securing:

(*a*) the retailer against discontinuance of his trade, and

(*b*) the owner against discontinuance of the premises as premises in which a retail trade could be carried on, the payment therefore being for the purpose of preserving the owner's rights as owner.

> "In the argument I put the case of an on licence under which the profit of the trade in wine, in beer, and in spirits was fairly equal, one-third profit attaching to the retail sale of each of the articles. It hardly appears to me to be possible that a payment made even on the assumption that it was for the purpose of keeping up the brewer's beer connexion with the premises, can be said to have been wholly applied to and expended upon that, seeing that this formed only one-third of the business, and the other two-thirds of the interests covered by the payment had reference to a trade in other articles. Under the statute, however, a deduction, to be legitimate, must be both exclusively and wholly for the purposes of the Appellants' brewing trade; whereas, even on the facts in the present case, it must be conceded that the payment was, in any view, partially for keeping up a trade in articles not supplied by the brewer."

His Lordship also stated that the payment was made *quâ* owner, not *quâ* trader.

Arguments for and against Deduction.—Although *Smith* v. *Lion Brewery Co., Ltd.*, produced a diversity of arguments, the length of the judgments in the progress to the House of Lords evinced considerable contentious points both in favour of and in opposition to the allowance of expenses of "tied" houses. The principle underlying the admission of these expenses is one which permeates the Income Tax incidence, and the arguments, apart from the opposing and contradictory interpretations of the words "wholly and exclusively" in Rule 3 to Cases 1 & 2 of Schedule D both for and against, are outlined hereunder.

For Allowance.—

(1) The facts found in the case stated.

(2) That the wholesale seller of beer has equal rights with the retail seller.

(3) That the possession of "tied" houses results in increased profits which are taxed, and that such increased taxed profits could not be earned without the "tied" houses, and that therefore a compulsory expense without which the particular portion of the profits could not be obtained, should be admitted as a deduction in computing assessable profits.

Against Allowance.—

(1) That the expense is an insurance against the loss of the licence, and therefore of the trade of the house, which trade is that of the tenant.

(2) That the licence covers wines and spirits, which are not "tied" for purchase from the owner of the house.

(3) That the brewer holds the house in the capacity of landlord, not of trader.

(4) That a non-trading landlord would not be able to deduct the expenses from profits of trade, and that the payment would fall on the landlord whether he were a trading landlord or not.

(5) That diminution of rent by the tenant's deduction of the Compensation Levy is too remotely connected with the earning of the brewer's profits.

Usher's Wiltshire Brewery Co., Ltd. v. *Bruce* (1915), p. 106, has disposed of the opposition to allowance by negativing the previously prevalent arguments.

Call of Licences, &c.—The expenses involved in "call of licences," and other *unsuccessful* applications for new licences, are inadmissible as a deduction by *Southwell* v. *Savill Bros., Ltd.*, [1901] (*q*), and it appeared from the case stated that when the applications were *successful*, the cost was treated as a capital expense, being added to the cost of the new house. The expenses were incurred in connexion with the "managed" and "tied" houses of the company, and were expended in connexion with applications made by the company to the Licensing Justices for the granting of new and additional licences. The disbursements consist of law costs, printing, and advertising, preparing petitions, serving notices, court fees, surveyors' fees, and payments for "call of licences." The latter represent payments made to owners of Public Houses for the right to call for a surrender of the licences attached to such houses, in the event of such licences being required by the Licensing Justices to be surrendered before the grant of a new licence for a new house.

> KENNEDY, J.: "It is a sum which may be treated as an investment; not an investment of a sum out of profits which they have realized, but an investment which goes to capital, and it seems to me that if, as they admit, they do not feel themselves justified in treating in the same way their expenditure, which is an expenditure for obtaining licences of houses where it is successful, they cannot claim that as a deduction. . . . Cases have been cited to us, certainly, which have shaken the view which on first looking at the case I should have been inclined to take, namely, . . . that the expenditure was incurred by the Respondents in their trade as brewers. There seems to be, at any rate, considerable doubt as to that question."

PHILLIMORE, J., could not see why the expenses of *unsuccessful* applications should be allowed when it was not contended by the company that the expenses of *successful* applications should be allowed.

(*q*) 2 K. B. 349; 65 J. P. 649; 70 L. J. K. B. 815; 85 L. T. 167; 49 W. R. 682; 17 T. L. R. 513; 4 Tax Cas. 430.

"I only want to guard myself further, by saying that without deciding it, because we have not heard the matter fully argued—at any rate, for the Crown—I should have thought, in the case of brewers dealing in tied houses, the expense of the upkeep of licences, and the expense of procuring the renewal of licences, was a legitimate trade expense. However, we have not heard the Solicitor-General fully upon that, and, therefore I give no decision."

(See p. 325, for specimen Brewery Company's adjustment for Income Tax purposes.)

BENEFIT MATCHES.

The sum derived from a benefit match given in aid of a footballer is not assessed in practice.

BROKERS' COMMISSION.

Commission paid to brokers in connexion with the raising of debentures is inadmissible: *Texas Land and Mortgage Co.* v. *Holtham* (1894). (See "Debentures," p. 162.)

BUILDING SOCIETIES.

The Schedule D assessment on Building Societies presents some peculiar characteristics, and, in practice, the assessment is governed generally by arrangements made by the Board of Inland Revenue, and not objected to by the Commissioners (*post*).

There is not a uniformity of constitution in regard to Building Societies, and a distinction may be made as follows:—

(1) Permanent Societies having an annual distribution or allocation of profits, in the form of either interest, dividends, or bonuses (see *post*).

(2) Terminable Societies having a distribution of profits at the end of their existence. (See *post*.)

Cases.—

In *Re Middlesborough, &c., Benefit Building Society, ex parte Wythes* (1885) (*r*), the Society made advances on mortgage of

(*r*) 53 L. T. 492.

property, and such advances were repayable over a term of years by instalments covering both principal and interest. It was held that Income Tax was deductible from so much of the instalments as represented interest, if the latter could be ascertained.

In *Leeds Permanent Benefit Building Society* v. *Mallandaine*, [1897] C. A. (*s*), advances were made to members only, on the security of property.

The members held one or more shares, or one or more fifth parts of a share, the shares being divided into two classes :

(*a*) Investors' shares, which are again divided into subscription and paid-up shares.

(*b*) Borrowers' shares.

Another class of persons with whom the Society had dealings were depositors who were not members but creditors.

Out of the money received by the Society in respect of Investors' Shares and Deposits, advances were made to borrowers, and were repayable at the rate of 2*s*. 6*d*. per share, whether large or small. It thus arose that the repayments consisted partly of capital and partly of interest. If the share was a large one, the repayment was spread over a number of years, thereby causing the first instalment to be practically all interest, whereas with a small loan the proportion of interest would be less. As repayment proceeded, the interest portion would decrease, owing to part of the capital being paid off, and the capital portion would increase accordingly.

The income of the Society was derived from charging a slightly higher rate of interest to borrowing members than was granted to depositors, or, generally speaking, to investors. The difference between the percentage paid to depositors and investors, and that received from borrowers was as little as by calculation it was estimated would afford the necessary amount to carry on the business of the Society, such, *e.g.* as for office and staff expenses. A surplus accumulated from time to time

(*s*) 2 Q. B. 402 ; 61 J. P. 675 ; 66 L. J. Q. B. 813 ; 77 L. T. 122 ; 3 Tax Cas. 577.

out of the fund so brought into existence, beyond the expenses of carrying on the business, and this surplus was from time to time divided among the members.

"Interest" forms a special subject of assessment under No. 1 of Schedule D in the Income Tax Act, 1918 (see p. 266).

The Society refused to allow the borrowers to deduct tax from the interest included in the repayments on the grounds that the interest could not be distinguished, and was not "annual interest" within sec. 40 of the Income Tax Act, 1853, which authorizes deduction of tax in respect of annual interest.

It was held that the Society was liable to assessment on the interest received from borrowers, whether it be annual or not.

WILLS, J., decided that the interest was not yearly interest, but was a subject of taxation under Schedule D of the Income Tax Act, 1853.

GRANTHAM, J., stated that:

> "If they have chosen to arrange with their borrowers that the payments should be in such a way that the borrowers could treat their payment as an annual interest, why then they would be able to say as a mortgagor is able to say, 'Now I have allowed this to my borrowers and they would not be obliged to pay it twice over'; but they have not done so, and they say here in terms, 'We decline to allow our borrowers to charge us because we say it does not come under the rules under which they are entitled to deduct the interest paid to us.' That being so it is exactly like a profit. It is exactly like a business call it what you like, but it comes under the term interest."

The case went to the Court of Appeal, and it was argued for the Society that the properties purchased nominally by the borrowers were mortgaged to the Society, which thereby invested its money in property, and that as the properties had been taxed under Schedule A, the whole property of the Society had been taxed. The assessability of the Society on the full amount of interest was upheld, and the MASTER OF THE ROLLS stated:

> "They (*the borrowers*) borrow so much money upon a contract, made by these Articles of Association, that they will, as long

as that money remains lent to them, pay interest on it at the rate of 3½ per cent. If they borrow £100, and during the year they pay off £50, the rate of the interest is not altered a bit. It is the sum on which that interest at that rate is to be paid which is altered; instead of having to pay 3½ per cent. on £100, they have to pay 3½ per cent. on £50. But the whole of that transaction with regard to the money is a pure transaction of money lent upon the terms that, as long as it or any part of it is unpaid, interest at 3½ per cent.—which means 3½ per cent. per annum—at that rate, is to be paid. Then by way of collateral security—mind, not interfering with the contract at all; no part of the contract; a wholly different contract—these people mortgage their premises."

"The plain construction of this Statute is what it plainly says—that, if any person lends money, and, in respect of that, obtains interest, that interest is a thing which can be taxed under these Income Tax Acts, and that these people who get £60,000 a year are taxable in respect of that money—of course I mean so much of it as is interest, notwithstanding the supposed difficulties, which, in the hands of any man competent to calculate, will not be difficulties which will last a quarter of an hour."

A. L. SMITH, L.J., in referring to the Society's contention that the only matters assessable were profits and gains derived in the way of business, agreed with the decision in *Clerical, Medical, and General Life Assurance Society* v. *Carter* [1889], C. A. (*t*), that interest was a separate subject matter, on which Income Tax could be levied.

RIGBY, L.J., in dealing with a contention of the Society that exemption is secured by reason of the charitable nature of the Society, stated that "I think that is driving the Acts to an absurdity that we are not bound here to give way to."

Arrangements.—The Board of Inland Revenue has prescribed the following alternate arrangements for assessment:—

ARRANGEMENT A.

1. All interest to be exempted where the borrowing member is exempt by reason of his total income from all sources not

(*t*) 22 Q. B. D. 444; 53 J. P. 276; 58 L. J. Q. B. 224; 37 W. R. 346; 2 Tax Cas. 437.

exceeding £130, the society undertaking to see that each borrower makes the usual claim to the surveyor for the district in which he resides, and to afford facilities to the surveyor or surveyors for the requisite verification of the claims.

2. Where the borrowers are not so exempt, the properties on which the interest is secured by mortgage, or otherwise, to be retained in charge according to their respective annual values, and the society to allow the borrower to deduct the tax applicable to the interest.

3. All property in the society's hands as mortgagees in possession to be exempted, except as to ground or lease rents, if any.

4. The society to furnish a statement, to be verified by the surveyor once a year, of the interest paid or credited to depositors and members whose incomes exceed £130 a year, from whom the society would have the right to deduct the tax, whether the society exercised the right or not.

5. The society to furnish a list of the interest received from the borrowers to whom the society has allowed the tax, with all necessary particulars of the properties assessed, and vouchers annexed in the shape of certificates of deduction of the tax on Form No. 185.

6. Where the total interest received (paragraph 5), on which the society has allowed the tax, exceeds the total interest paid or credited (paragraph 4), on which the society has the right to retain the tax, the society to be repaid the duty on the difference, and where the converse is the case, that is, where the tax which ought to be retained by the society exceeds the tax allowed by the society, the society to render a return of the difference for assessment under Schedule D.

ARRANGEMENT B.

1. The society consents to be directly assessed under Schedule D upon the amount credited in the year preceding the year of assessment for, or in respect of, dividends on shares, bonuses, and deposit interest. One-half of the total

amount to be charged with Income Tax and one-half allowed to cover exemptions (*a*).

In consideration of such direct assessment :—

2. All property in the society's hands as mortgagees in possession to be exempted, except as to ground or lease rents, if any.

3. A borrower whose total income from all sources does not exceed £130 is not to be charged for mortgage interest ; if charged the duty assessed in respect of the mortgage interest is either to be allowed as a double assessment or repaid by the Board.

4. A borrower, not entitled to exemption, to be repaid by the Board such portion of the duty charged on his property as is applicable to mortgage interest. Application for repayment to be made to the Board, and supported by a certificate (*on Form No.* 13, *see* p. 131) from the secretary of the society as to the amount of mortgage interest paid for the year of assessment, or the amount of interest so certified may be allowed from the assessment.

5. Investors and depositors not to be charged for the dividends or interest they receive ; if charged, on proof thereof, to be entitled to relief.

6. When required, any society accepting this arrangement to permit any duly appointed officer of the Board to test the accuracy of the amount returned for Schedule D assessment, or to verify the correctness of any certificate given under the arrangement.

Ballot and Sale Societies.—In the case of Ballot and Sale societies, including Starr Bowkett and similar societies, the only liability is for the annual profits from the sale of Appropriations, Premiums, and Bank or other untaxed interest. The assessment is further restricted to the proportion of these profits attributable to members who are not exempt, owing to their total annual incomes exceeding £130.

(*a*) In the case of societies which entered into the arrangement before 23rd February, 1898, the amount paid is the basis of the assessment.

The following concession of the Board of Inland Revenue may be applied if the society so desires :—

1. As a concession the working expenses of these societies may be allowed in computing the liability under Schedule D, provided that the whole of the receipts, including premiums, interest, fines, fees, subscriptions for working expenses, and any other profits are brought into the computation.

2. No part of the payments made by borrowing members to the societies is to be allowed as a deduction from the Schedule A assessments.

3. A proportionate allowance in respect of the profits of exempt shareholders may be made if full particulars be furnished to the Surveyor to enable him to make this adjustment.

Terminable Societies.—Terminable societies (*ante*) may be assessed on the same principle as Ballot and Sale societies (*ante*), or under a modified form of Arrangement B (*ante*), including Numbers 2 to 6 thereof, and the assessment would be either—

(*a*) Based on one-half of the dividends, bonuses, and interest credited each year plus one-half of the undivided profit of the year, or

(*b*) In accordance with No. 1 of the concession to Ballot and Sale societies (*ante*).

Set-off.—A set-off is allowed, of the income derived from all taxed investments, against the liability otherwise assessable, of a Building Society which has been admitted to Arrangement A or B. If the taxed income of the society, including its income from investments, exceeds the amount of such liability, the tax applicable to the excess will be repaid.

Friendly Societies.—The Arrangements A and B are also applicable to Registered Friendly Societies and Industrial and Provident Societies acting as Building Societies.

Relief.—When a person holding an advance from a Building Society claims relief (see p. 341), it is necessary to

arrive at the total net income from all sources, and therefore determine the portion of the repayments to the society which represents interest. The following form under Arrangement B is completed by the secretary of the society.

No. 13. Share No.

BUILDING SOCIETIES (ARRANGEMENT B).

INCOME TAX.

Name of Society.
Address

I hereby certify that Mr.
of
has, during the twelve months ended 192
paid to this Society the sum of pounds shillings,
and pence (£ *s.* *d.*) for Mortgage Interest on property known as under :

Parish
Street
No. of House

I further certify that the Income Tax chargeable under the terms of Arrangement B has been, or will be, paid over to the Revenue.

Date 192 Secretary.

The following notice is attached to the above form :—

The following relief is afforded to Borrowing Members under the above arrangement :—

(1) A Borrower whose total income from all sources does not exceed £130 per annum is not to be charged for Mortgage Interest. If charged, he should apply to the Local Surveyor of Taxes for relief from the Assessment, or, if the duty should have been paid, for a Form of Claim of Repayment.

(2) A Borrower not exempt from Income Tax is to receive an allowance from the property tax assessment in respect of the duty on the amount of the Mortgage Interest. To obtain this allowance he should, before payment of the duty, forward this Certificate, together with the Collector's Demand Note (see p. 385) to the Inspector of Taxes for the district in which the property is situated.

Or, if the allowance from the assessment is impracticable, the duty on the Mortgage Interest will be repaid by the Board of Inland Revenue, upon a written application to the Secretary, Inland Revenue (Claims Branch), supported by this Certificate and the Collector's receipt for the duty paid.

BURIAL BOARD.

The surplus of income over expenditure in connexion with a burial ground is assessable. (*Paddington Burial Board* v. *Commissioners of Inland Revenue* (1884) (*b*).)

The sole income of the Board was derived from payments made in accordance with a fixed scale of charges for interments and other fees. Any surplus was applied in aid of the rates. DAY, J., in disposing of the contention that the profits are not assessable, as they go in aid of the rates, stated that once the profits are ascertained Income Tax attaches, and the destination of the profit is immaterial. A further contention that the Board is a "Charity" was dealt with. "I can see no charity of any sort or kind in it. . . . I see no reason whatever why they should be exempted more than any cemetery company or any individual that likes to carry on the business of burying his neighbour."

(See Cemeteries, p. 150.)

CANALS.

Canals are assessed under No. III. of Schedule A (p. 56) on the profits of the preceding year, and the assessment is to be made at the head office of the company.

CAPITAL EXPENDITURE.

There are specific legal prohibitions of deduction of capital expenses (Rule 3 to Cases 1 and 2 of Schedule D, p. 84) negativing allowance in respect of—

(*a*) Any capital withdrawn.

(*b*) Any sum employed or intended to be employed as capital.

(*c*) Any capital employed in improvement of premises.

Sec. 209 of the Income Tax Act, 1918, limits deductions to such as are enumerated in the Act, and rejects deduction on account of diminution of capital. (See p. 85.)

(*b*) 13 Q. B. D. 9; 48 J. P. 311; 53 L. J. Q. B. 224; 50 L. T. 211; 32 W. R. 551; 2 Tax Cas. 46.

Sums of the nature of capital are not allowable as deductible expenses, but capital is not a subject of charge, as it is an established principle that capital should not be taxed. This, however, needs qualifying in that many expenses such as those involved in Wasting Assets, and which are ordinary trading expenses from a commercial point of view, form, by their non-allowance, a taxation of capital. A mere description of a sum as Capital or Revenue is not in itself sufficient to constitute that sum Capital or Revenue for Income Tax purposes, and the Lord CHANCELLOR, in *Scottish Provident Institution* v. *Allan*, [1903] H. L. (*c*), ruled that—

> "It is obvious that the mere nick-naming the sum received and ascribing to it, because it is so named, the character of capital and not of income, cannot defeat the right of the Crown to have the tax levied upon that which in substance and truth is profit," and LORD DAVEY in the same case stated that "I agree that the mere calling it capital for the purpose of the Inland Revenue Department will not make into capital, that which is essentially and in truth profit."

In *Secretary of State for India* v. *Scoble and others*, [1903] (*d*), the LORD CHANCELLOR further ruled that it was never intended by the Acts to tax capital as income.

It may be urged in arguing a case on the question of whether a particular expense is capital expenditure or not, that the expense does not increase the capital value, but in *Granite Supply Association, Ltd.* v. *Kitton*, [1905] (p. 304), where removal expenses of plant were disallowed (*e*), it was held that—

> "There are costs that would not properly be set against the income of the year, and which yet may not add to the capital value. Suppose a person is imprudent enough not to insure his premises or his goods, which can be insured, and they are burned down, and he has to replace the building, he could not be allowed to charge the new building against the income of the year."

(*c*) A. C. 129; 67 J. P. 341; 72 L. J. P. C. 70; 88 L. T. 478; 19 T. L. R. 432; 40 Sc. L. R. 605; 5 F. 10; 4 Tax Cas. 591.

(*d*) A. C. 299; 72 L. J. K. B. 617; 89 L. T. 1; 51 W. R. 675; 19 T. L. R. 550; 4 Tax Cas. 618.

(*e*) 43 Sc. L. R. 65; 8 F. 55; 5 Tax Cas. 168.

Definition of Capital.—Capital for Income Tax purposes does not differ from capital for commercial purposes, as was laid down in *English Crown Spelter Co., Ltd.* v. *Baker* (1908) (p. 137), and in *Vallambrosa Rubber Co.* v. *Farmer* (1910) (p. 150).

Wasting Assets.—One of the most important Income Tax cases, affecting the question of deductibility of expenses, is *Alianza Co., Ltd.* v. *Bell*, [1906] (*f*), decided in the House of Lords in 1905. The Company, which was an English one, was formed to work some nitrate deposits in Chili, and when the nitrate is exhausted, the plant, and of course the nitrate, will be of no value.

The Company claimed deduction of a sum of £25,000 which had been set aside in the year in question to meet *inter alia* the ultimate exhaustion of the nitrate grounds. The deduction was held to be inadmissible for Income Tax purposes, thus creating in effect a taxation of capital, as if, *e.g.* the deposits were purchased for £100,000 and had a life of four years it would be seen that the disallowance would result in the £100,000 capital being taxed.

The available profit for 1899 was divided by the Company as follows :—

	£	*s.*	*d.*
A dividend of 6 per cent. on the share capital . .	60,000	0	0
Redemption of capital account	25,000	0	0
Carried forward to 1900	3,186	12	5
	88,186	12	5

It was contended that nitrate was in the position of raw material which a trader has to purchase in order to work it up for sale, but the Crown urged that the expense was for exhausted capital and prohibited by Rule 3 (*ante*).

In the Divisional Court CHANNELL, J., decided against the Company on the ground that "in the particular Company that I am dealing with this is an exhaustion of capital, and

(*f*) A. C. 18; 75 L. J. K. B. 44; 93 L. T. 705; 54 W. R. 413; 22 T. L. R. 94; 5 Tax Cas. 172.

that exhaustion of capital is not a subject for which deduction can be made under the Income Tax Acts."

In the Court of Appeal the MASTER OF THE ROLLS held that the case was concluded by authority and that the Company's contention to the contrary, based on the point that the authority related to Mines under No. III. of Schedule A, and not to Schedule D, was irrelevant, "as the provisions of Schedule D are no more favourable to the appellants than those of Schedule A." The MASTER OF THE ROLLS reviewed some analogous cases as follows :—

> "In *Gillatt* v. *Colquhoun* (*g*), a case under Schedule D in which a deduction was claimed in respect of the depreciation in value of a leasehold interest by effluxion of time, Mr. JUSTICE A. L. SMITH said, 'It seems to me that in the case of *Coltness Iron Company* v. *Black* (*h*), the learned Law Lords undoubtedly lay down that which seems to me to be applicable to Schedule D as well as to Schedule A, namely, that diminishing capital or exhausted capital cannot be brought into your profits and gains when making out your accounts either under Schedule D or Schedule A.' Again in the *City of London Contract Corporation* v. *Styles* (*i*), another case under Schedule D, the same principle was upheld in the Court of Appeal. The deduction was there claimed in respect of a portion of the sum paid by the Company in purchasing the benefit of certain unexecuted contracts which the Company was formed to take over, and from executing which their profits were realized. The argument there, as here, was, that 'you can use your capital in purchasing contracts from which you derive your annual profits. It is capital to start with, but then you use your capital wholly and exclusively for the purposes of the concern'; to which LORD JUSTICE BOWEN answers, 'You do not use it for the purpose of your concern, which means for the purpose of carrying on your concern, but you use it to acquire the concern.' The deduction was disallowed."
>
> "That the principles governing this question are the same under both Schedules was again asserted by the Scotch Court in *Edinburgh Southern Cemetery Company* v. *Kinmont*" (*k*).

STIRLING, L.J., held that although there was a *primâ facie*

(*g*) (1884) 33 W. R. 258 ; 2 Tax Cas. 76.
(*h*) (1881) 6 App. Cas. 315 ; 46 J. P. 20 ; 51 L. J. Q. B. 626 ; 45 L. T. 145 ; 29 W. R. 717 ; 1 Tax Cas. 287.
(*i*) (1887) 4 T. L. R. 51 ; 2 Tax Cas. 239, C. A.
(*k*) (1889) 17 R. (Ct. of Sess.) 154 ; 27 Sc. L. R. 71 ; 2 Tax Cas. 516.

reasonable claim the question was concluded by Rule 3 to Cases 1 and 2 (p. 83), which prohibits a deduction in respect of capital.

His Lordship also cited sec. 159 of the 1842 Act (*ante*) (now sec. 209 of the 1918 Act), and stated that it is clear that the law does not permit all deductions which a prudent trader would make for the purpose of arriving at his profit. He further mentioned that—

> "For the present purpose it is sufficient to say that I am not satisfied that such capital, if any, as may be lawfully paid away by a Company to its shareholders in the shape of dividends, would be regarded by the legislature as an unfit subject for assessment to Income Tax, or would not fall within the prohibited deductions in respect of 'capital withdrawn,' or sums 'employed or intended to be employed as capital.'"

The House of Lords upheld the decision of the Court of Appeal and LORD ROBERTSON held that the deduction claimed was capital, which in his opinion was concluded by the findings in the case, and he fully agreed with the Master of the Rolls that the matter at issue was a case of capital being embarked in a wasting subject matter.

Unexecuted Contracts.—In *City of London Contract Corporation* v. *Styles* (1887), C. A. (*l*), the Corporation claimed deduction of a sum of £80,000 in respect of the price paid for unexecuted contracts taken over. The said sum had been written off the Revenue accounts as "amount deducted from purchase account for surplus assets realized, and amount written off goodwill." The Corporation stated that this sum substantially represented a portion of the purchase money paid to Charles Philips & Co., for the purchase of the contracts and business on which the profits were realized. The purchase money was £180,000, and the said business consisted entirely of partially executed or wholly unexecuted contracts.

FRY, L.J., was of the opinion that the sum of £80,000 was "employed or intended to be employed" as capital within

(*l*) 4 T. L. R. 51 ; 2 Tax Cas. 239.

Rule 3 *to Cases* 1 and 2, *Schedule D*, and therefore inadmissible as a deduction.

Dredging.—The sole means of ingress and egress between the works of Messrs. Vickers, Ltd., and the sea was by the Walney channel, which latter was under the authority of a railway company, and had not been dredged and maintained, so that Messrs. Vickers, Ltd. and the railway company agreed to share the expense of a scheme for making the channel more navigable and for constructing a deep-water berth. Without this work Messrs. Vickers, Ltd. would not have been able to deliver the battle cruiser "Princess Royal." Allowance of the expenses was refused as the outlay affected the business generally by giving a new means of getting to the sea and was, therefore, capital expenditure: *Ounsworth* v. *Vickers, Ltd.* (1915) (*m*).

Advances to another Company.—In *English Crown Spelter Co., Ltd.* v. *Baker* (1908) (*n*), the company required supplies of "blende" for use in its business of zinc smelting, and a new company to supply this blende was formed. Advances were made by the appellant company to the new company, and as the latter was not successful and went into liquidation the amounts due to the appellant company were written off as bad debts. It was held that the advances were investments of capital and therefore not deductible.

The directors of the appellant company passed a resolution to form the new company to acquire certain leases, and the latter company was registered with a nominal capital of £30,000, subsequently acquiring the leases in question. The appellant company subscribed for 8997 £1 shares out of the 10,000 then issued by the new company, and three were taken by signatories to the memorandum; the four directors of the appellant company subscribed for the residue of the said 10,000 shares, viz. 250 each. These directors and the secretary of the appellant company were appointed directors

(*m*) 3 K. B. 267; 84 L. J. K. B. 1690; 31 T. L. R. 530; 139 L. T. 865.
(*n*) 99 L. T. 353; 5 Tax Cas. 327.

and secretary respectively of the new company. The total amount of blende delivered to the appellant company was of the value of £5826 7*s.* 5*d.*, and the advances made by the appellant company amounted to £44,124 13*s.* 4*d.*, the difference, £38,298 5*s.* 11*d.*, being the amount at issue.

BRAY, J., ruled that it is—

> "perfectly clear from the Act that the Income Tax payer has no right to deduct . . . anything in the nature of capital expenditure . . . What you have to see is whether, in common parlance, it is capital expenditure, that is to say, an expenditure on account of capital—an expenditure which, on the ordinary profit and loss account, would not appear as a debit at all, but would appear as a debit when you are dealing with assets."

Mr. Justice Bray further pointed out that the advances were not against goods to be delivered, but that the new company was in difficulties and the appellant company lent them money. He concluded that this was an investment of capital and not an advance against goods.

The above case is extensively relied upon by Inspectors of Taxes as showing that losses on loans by one company to another are not allowable, but the case does not go that far as it only disallows losses on investments of capital. In *Reid's Brewery Co., Ltd.* v. *Male* (1891) (p. 112), it was held in the Court of Appeal that losses on loans by a brewer to a publican, who was a customer, were deductible, as the loans were not investments but money used in and for the business. Where, therefore, a trader advances money to another trader with a view to increasing the trading profits and not as an investment, any loss is fully allowable as being (*a*) an expense wholly and exclusively laid out for the purpose of the business within Rule 3 (p. 83); (*b*) within *Reid's* case (*ante*); and (*c*) within *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce* (1914) (p. 104), which allowed, in the House of Lords, any expenses *commercially* expedient.

See also *Marsden & Sons, Ltd.* v. *I. R.* (1919) on a similar point.

Loss of Capital.—In *Smith* v. *Westinghouse Brake Co.* (1888) (*o*) the Company had expectations of a large foreign

(*o*) 2 Tax Cas. 357.

trade and opened a manufactory at Paris and fitted machinery. The expectations did not materialize, and eventually the manufactory was closed and portions of the machinery removed to Hanover and London. Subsequently the manufactory was re-opened on a smaller scale and the remainder of the machinery was used therein. The Company claimed to deduct £3000 in regard to the loss arising through a large portion of the original cost of constructing the factory and fitting the machinery, being lost.

It was held that the deduction was inadmissible, as the Company had invested money in what was capital machinery, and on making up their accounts they found that the machinery was worth £3000 less than the original cost, but this sum was a loss of capital, not of profits, and therefore could not be deducted.

In *I. R.* v. *Western S.S. Co.* (1907) (*p*) the Company owned a steamer valued at £37,000 and insured for £34,500. The Company charged against profits an annual sum equal to an insurance premium on the balance of £2500. The ship was lost and the Company claimed to deduct its loss of £2500. It was held that the loss was one of capital, and that the annual sum was only a reserve.

In *Legg & Sons* v. *I. R.* (1922) the Company (shipowners and coal importers) insured their ships at half value and a reserve fund was created for the balance. A ship with a market value of £15,000 was lost. It was insured for £8000 and the loss of £7000 was claimed as a deduction. The Irish Court decided that the loss was one of capital.

Defective Structural Condition.—It was decided in *Clayton* v. *Newcastle-under-Lyme Corporation* (1888) (*r*) that deduction could not be made of sums set aside annually to be expended in future years on restoring plant and apparatus of a gasworks purchased in a defective structural condition.

Improvement of Railway Line.—A claim was made in

(*p*) S. C. 1005 : 44 Sc. L. R. 715.
(*r*) 2 Tax Cas. 416.

Highland Railway Co. v. *Balderston* (1889) (*s*) to deduct sums expended in improvement of a section of the railway line to bring it up to the standard of the main line, and for extra weight of heavy rails and chairs in place of the lighter ones. The Court decided against the allowance.

The sums in question were charged against capital in the Company's books and the LORD PRESIDENT stated that by charging the sums against capital the Company was able to show a larger profit and thus pay their shareholders a larger dividend than if the sums had been charged against income.

> "One result of that would have been, if their present argument was sustained, that the aggregate amount of Income Tax which they deducted from their shareholders in paying their dividends would be much larger than the sum that the Company would now pay to the Inland Revenue, and so a considerable balance of the Income Tax upon the actual revenue of the Company would remain in the pocket of the Company itself."

His Lordship also pointed out that it appeared that the Company had acquired the portion of the line at a low figure owing to its imperfect condition, and that if it had been brought up to the standard before purchase, a higher price would have had to have been paid. The expenses in question have formed a permanent improvement of the property.

LORD MURE agreed with the inadmissibility of the expenses, and said that it was a remarkable fact that the charges were entered against capital in the Company's books. "I agree . . . that that is not conclusive of the question, but it cannot be thrown altogether out of view."

Syndicate.—In the *Californian Copper Syndicate* (*Ltd. and Reduced*) v. *Harris* (1904) (*t*) the Company was formed with the object of *inter alia* acquiring and reselling mining property, and after acquiring and working certain properties the Company resold to a second Company receiving payment in fully-paid shares of the latter Company. It was held that Income Tax

(*s*) 26 Sc. L. R. 657 ; 2 Tax Cas. 485.
(*t*) 6 F. 864 ; 41 Sc. L. R. 691 ; 5 Tax Cas. 159.

was chargeable on the difference between the purchase price and the value of the shares.

The Company contended that it had no income, as the sales were really transactions by which the Company substituted for its capital in the form of land, a capital in the form of shares, and that any benefit resulting from such a transaction was a growth of capital and not of income. The Inspector of Taxes argued that the Company was formed for the purpose, *inter alia*, of acquiring and reselling properties, and that any profits made on such resales were assessable.

LORD JUSTICE CLERK ruled that—

> "It is quite a settled principle in dealing with questions of assessment of Income Tax, that where the owner of an ordinary investment chooses to realize it, and obtains a greater price for it than he originally acquired it at, the enhanced price is not profit in the sense of Schedule D of the Income Tax Act of 1842 assessable to Income Tax. But it is equally well established that enhanced values obtained from realization or conversion of securities may be so assessable, where what is done is not merely a realization or change of investment, but an act done in what is truly the carrying on, or carrying out, of a business. The simplest case is that of a person or association of persons buying and selling lands or securities speculatively, in order to make gain, dealing in such investments as a business, and thereby seeking to make profits. There are many companies which in their very inception are formed for such a purpose, and in these cases it is not doubtful that, where they make a gain by a realization, the gain they make is liable to be assessed for Income Tax . . . the question to be determined being—is the sum of gain that has been made a mere enhancement of value by realizing a security, or is it a gain made in an operation of business in carrying out a scheme for profit-making?"

In referring to a contention of the Company that the price being in the form of shares, no assessment could be made until such shares were realized, his Lordship said, "But it was said that the profit—if it was profit—was not realized profit, and, therefore, not taxable. I think the profit was realized. A profit is realized when the seller gets the price he has bargained for. No doubt here the price took the form of fully paid up shares in another company, but, if there can

be no realized profit, except when that is paid in cash, the shares were realizable and could have been turned into cash."

See p. 46.

Commutation of Salary.—In *Royal Insurance Co.* v. *Watson* (*a*), the Company acquired another Insurance Company and undertook to retain the services of the manager of the latter at a salary of £4000 a year with liberty to commute such salary by payment of a lump sum if the appellant Company desired. Commutation was ultimately adopted, and it was claimed to deduct the amount of such commutation, but it was held that the payment formed part of the consideration for the transfer of the business, and was therefore capital expenditure.

The LORD CHANCELLOR said that—

> "it is capital expenditure, it is the purchase money for the concern, that is to say, it is partly so. It is perfectly immaterial whether it was entirely so, or partly so, because if it was partly so, it is enough to establish the proposition which I am maintaining."

LORD SHAND dealt with some interesting comparative matters, and expressed the opinion that if a voluntary agreement were made between a manager and a Company for payment of a salary for a specified number of years, but with power to the Company to terminate the service, whenever they thought fit, by payment of a capital sum, there would be considerable force in a contention that the payment should form a deductible allowance, and this would also be applicable where there had been wrongful dismissal of a person having an engagement for a term of years and who obtained damages.

Commutation of Pension.—In *Hancock* v. *General Reversionary & Investment Co.* (1919) (*b*) the Company claimed to deduct a capital sum paid to purchase an annuity equal to a pension payable to a retired secretary. The sum was allowed, as the Court held that a lump sum paid in place of a series of annual payments could not alter the character of the payment or make it less admissible. The case of *Smith* v. *Incorporated Council of Law Reporting* (p. 305) was followed, and *Royal Insur-*

(*a*) [1897] A. C. 2; 61 J. P. 404; 66 L. J. Q. B. 1; 75 L. T. 334.
(*b*) 1 K. B. 25.

ance Co. v. *Watson* (*ante*) distinguished, as the payment there arose out of a contract to acquire another business and was part of the *capital* cost of acquiring it. LUSH, J., could not agree that, unless money is expended as remuneration for services rendered in the trading year, it could not be deducted, and he considered the decision in *Usher's Wiltshire Brewery* v. *Bruce* (p. 104) to be consistent with his view. He cited *Ounsworth* v. *Vickers* (p. 137), where, following *Vallambrosa Rubber Co.* v. *Farmer*, it was laid down that the proper test to apply is—" was the expenditure incurred in order to meet a *continuing business demand*, in which case it should be treated as an ordinary business expense and an admissible deduction, or was it an expenditure incurred once for all, in which case it should be treated as a capital outlay ? " Applying that test he considered that it should be treated, as the pension was treated, as an ordinary business expense ; " it is the pension in another form ; it is actually equivalent in value and it is identical in character." He also stated that the payment of a lump sum instead of recurring annual payments no more became a capital payment than the payment of a year's salary in advance instead of as it became due.

Redemption of Lease.—A redemption of a lease by a trader is similar to commutation of salary and is, therefore, allowable. If the trader continued paying the rent reserved under the lease it would be deductible just as would salary, so that if, to avoid continuance of a salary or a rent for matters which are commercially valueless to the trader, a lump sum is paid in discharge of future liability, that lump sum is merely an aggregate of allowable expenses.

Compensation.—In *Glenboig Union Fireclay Co.* v. *I. R.* (1922) the Company owned the minerals under land owned by a Railway Company, and the latter paid to the Glenboig Company £15,316 compensation for leaving minerals unworked under the railway. The House of Lords held that the compensation was not liable to Income Tax.

Interest Paid to Foreign Bankers.—*Farmer* v. *Scottish North American Trust, Ltd.* (1911) (*d*). A claim was made for deduction of interest paid under the following circumstances, and the Crown contended that the borrowings on which the interest was paid were sums employed as capital within Rule 3 to Cases 1 and 2 of Schedule D (p. 83). The main business of the Trust is to buy and sell investments, and as the value of its purchases of investments abroad exceeded its available cash, certain securities were lodged with bankers in New York to obtain a fluctuating overdraft, on which interest was charged at current rates from day to day. In addition to the overdraft, the bank subsequently granted a loan with a fixed maximum for six months at 6 per cent., which was renewed for a further six months and then terminated. The bank collected the interest of the securities, and after charging the interest due to themselves, credited or debited the Trust with the balance.

It was held that the interest paid was a deductible expense, and that the borrowings were not sums employed as capital.

The Trust was formed on 27th July, 1905, and the assessment in question for 1908–9 was arrived at as follows :—

	Year to 31st Oct., 1907.			15 months to 31st Oct., 1906.		
	£	*s.*	*d.*	£	*s.*	*d.*
Balance of profit as per P. & L. Account	4911	7	11	6119	2	5
Less balance brought forward from previous account	1119	2	5			
	3792	5	6			
Add sums debited as expenses and not allowable as deductions :—						
Suspense Account				414	15	4
Income Tax	108	18	11	378	2	2
Interest paid to bankers in America on loans by them to the Company	4576	13	4	80	5	4
	8477	17	9	6992	5	3
Deduct taxed dividends received by Company	2179	0	5	7882	8	5
Profit for year to 31st October, 1907	6298	17	4			
Loss for 15 months to 31st October, 1906	890	3	2			
Total profit for $2\frac{1}{4}$ years	5408	14	2			
Average yearly rate of profit	£2404	0	0			

(*d*) 132 L. T. Jo. 177.

LORD JOHNSTON ruled that—

> "It is immaterial that the loans were obtained and used in a foreign country. It is equally immaterial in what form these loans were obtained. They were short, in the sense that they were for short and indefinite periods, borrowed as occasion required, and repaid as opportunity permitted. They were, in fact, banking facilities or advances such as are represented by the ups and downs of a banking overdraft account."

His Lordship also dealt with the question—When does borrowed money become, for the purposes of the Income Tax Acts, capital of the concern in respect of which there is no deduction in name of interest, and when is it not capital in such sense so that interest paid for its use is a disbursement or expense "wholly and exclusively laid out or expended for the purposes of such trade"?

> "The dividing line is not easy to draw or to define. But I think that as the term 'profits' has, in applying the statutory provisions, been 'understood in its natural and proper sense, in a sense which no commercial man would misunderstand,' per LORD HALSBURY, L.C., in *Gresham Life Assurance Society* v. *Styles* (*e*), so may the term 'capital' be understood."

In the House of Lords LORD ATKINSON stated that—

> "authorities show that money borrowed by such a Company as the Appellant Company in this case in the fluctuating temporary manner in which it has been borrowed by them - the daily borrowing and lending of money being part of their trade and business—is not to be treated under the Joint Stock Companies Act as 'capital.' There is nothing to show that that word should bear a different meaning in the Income Tax Acts when applied to the proceedings of Joint Stock Companies. The interest is, in truth, money paid for the use or hire of an instrument of their trade as much as is the rent paid for their office or the hire paid for a typewriting machine. It is an outgoing by means of which the Company procures the use of the thing by which it makes a profit, and like any similar outgoing should be deducted from the receipts, to ascertain the taxable profits and gains which the Company earns."

His Lordship also disapproved of the authority of *Anglo-Continental Guano Works* v. *Bell* (1894) (*f*), and stated, in

(*e*) [1892] A. C. 309; 56 J. P. 709; 62 L. J. Q. B. 41; 67 L. T. 479; 41 W. R. 270.

(*f*) 58 J. P. 383; 70 L. T. 670; 10 R. 161.

reference to dicta therein (that in ascertaining the profits—you cannot take into consideration the fact that the firm or trader has to borrow some portion of the money which is employed in the business).

> "It does not appear to me that the reasoning on which this decision is based can apply to a bank whose business is the borrowing and lending of money; or to an investment Company whose business is conducted as is that of the Respondents in the present case. If it does apply then I can only say I think it unsound as so applied, and am unable to concur in it."
>
> (See also "INTEREST," p. 266.)

Sales of Lands.—An important question arose in *Stevens* v. *Hudson's Bay Company, Ltd.* (1909) (*g*), when it was decided that the proceeds of sales of land under the following circumstances were not assessable to Income Tax. The Company were established by Charter, and in 1869 they surrendered to the Crown their territory and rights of government in exchange, *inter alia*, for a money payment and a right to claim, within fifty years, a twentieth share in certain lands in the territory as the lands were from time to time settled. The lands were sold by the Company from time to time and the proceeds devoted partly to payments of dividends and partly to reduction of capital. The Company kept separate accounts for the Land Department and the Trading Department, and admitted liability to Income Tax on the profits of the latter, but contended that the proceeds of the sales of land were not taxable, as they represented part of the capital value of land acquired by the Company.

The MASTER OF THE ROLLS stated that—

> "I need not stay to observe that if the money is otherwise liable to Income Tax it cannot escape taxation by reason of its being applied to a capital purpose."
>
> "The real question is whether this money can be regarded as profits or gains derived by the Company from carrying on a trade or business. In my opinion it cannot. The Company are doing no more than an ordinary landowner does who is

(*g*) 101 L. T. 96; 25 T. L. R. 709, C. A.; 5 Tax Cas. 424,

minded to sell from time to time, as purchasers offer, portions suitable for building of an estate which has devolved upon him from his ancestors. I am unable to attach any weight to the circumstance that large sales are made every year. This is not a case where land is from time to time purchased with a view to resale; the Company are only getting rid by sale as fast as they reasonably can, of land which they acquired as part of a consideration for the surrender of their Charter."

FARWELL, L.J., ruled that a man who sells his land, or pictures, or jewels, is not chargeable with Income Tax thereon, but if instead of dealing with his property as owner he embarks on a trade in which he uses that property for the purposes of his trade, then he becomes liable to pay on the annual profits.

His Lordship could not see a distinction between the position and that of an English landowner with a game farm on part of his estate, and who sold parts of his estate for building purposes, as his trade as a game farmer does not bring his sales as a landowner within the Income Tax Acts. A landowner may lay out part of his estate with roads and sewers and sell it in lots for building, but he does this as owner, not as a land speculator.

"It would be different if a landowner, an individual, entered into the business of buying and developing and selling land; but the case of the owner, whether of land, or pictures, or jewels, selling his own property, although he may have expended money on them in getting them up for sale, is entirely different; he sells as owner, not as trader."

KENNEDY, L.J., characterized as immaterial the fact that the proceeds of the sales had been partly used for payment of dividends.

The question of sale of properties was also raised in *Tebrau (Johore) Rubber Syndicate, Ltd. (in Liquidation)* v. *Farmer* (1910) (*h*). The Company was formed to acquire estates in the Malay Peninsula for cultivation of rubber trees, but power was given in the Memorandum of Association to sell the property, and the sale was contemplated in the prospectus of the Company. As the original capital was insufficient to

(*h*) S. C. 906; 47 Sc. L. R. 816.

develop the estate, the whole undertaking was sold to a second Company, and the consideration, which was mainly in the form of shares in a second Company, was in excess of the capital expended.

It was held that the profit on the sale was an appreciation of capital and therefore not assessable.

Sale of Purchased Assets.—In *Assets Co., Ltd.* v. *Forbes* (1897) (*i*), the Company was formed of solvent contributories of a bank, and acquired from the liquidator the outstanding assets, including sums expected to be recovered from estates of contributories. The Company sold portions of the assets at prices in excess of the values at which they were shown in the books of the liquidators. The question of assessability was not decided by the Court, as it was held that the case, as stated, did not contain sufficient materials upon which to base a decision.

LORD YOUNG, however, stated that he had no doubt that any person, or any Company, making a trade of purchasing and selling investments would be liable to tax upon any profit made.

> " It is quite an intelligible business, just as intelligible as a trade consisting in the purchase and sale of goods in the ordinary trade of a merchant or shopkeeper . . . if proper traders sell their old premises and buy new ones, and sell the old premises at a higher price than they paid for them, investing in the purchase of the site and the erection of new premises the price which they got, I should say it was a totally untenable proposition that anything in excess of what they had paid for the old premises, perhaps, twenty years before, and which they got at a better time, that any excess upon the price which they paid at the better time is income within the meaning of the Act. I do not think it is at all."

In *Smith* v. *Moore* (1921) H. L. the owner of the business, by will, required his trustees to transfer his business to his son at a valuation which was not to include goodwill. Various coal contracts for future delivery at 14*s.* a ton were in existence at the date of death and, at that date, coal stood at 44*s.* a ton.

(*i*) 34 Sc. L. R. 486.

These contracts were valued at £30,000 which the son claimed to deduct, for Excess Profits Duty, against the period in which the coal under the contracts was sold. It was held that the £30,000 was capital expenditure and not allowable.

See *British Dyestuffs Corporation, Ltd.* v. *I. R.* (1923), p. 303.

Realization of Investments.—It is clear from the dicta in the above cases that any profit arising from the realization of investments is not assessable to Income Tax but is merely an appreciation of capital. A person speculating, as regards his private income, in stocks and shares, is not liable to tax on his profits thereby obtained. The Income Tax Acts have been rigidly construed as regards the inadmissibility of expenses which may be classed as capital expenditure, but this necessarily carries with it the fact that appreciations of *capital* do not form a subject matter of assessment.

In *Stott* v. *Hoddinott* (1916) (*l*) an architect took up shares in order to obtain architectural business and made a loss on realization of these shares. He claimed to deduct this loss from the profits from the architect's profits.

ATKINS, J., held that the shares were investments and the loss was one of capital, but that the position would have been different had it been in the nature of Mr. Stott's business to buy and sell shares or to take up shares and then, as part of his business and within a reasonable time, to turn over his capital so that part of the profits and gains in the business were profits and gains from those shares.

Reduction of Capital.—In *Archibald Thomson, Black & Co.* v. *Batty* (1919) (*m*) the Company having made losses had a debit balance on Profit and Loss account, and could not pay dividends although the Company was making profits. An application was made to the Court for a reduction of capital which incurred legal and other expenses. It was claimed by the Company that these expenses should be deducted. LORD JUSTICE CLERK refused the allowance on the ground that the expenditure was not for the purposes of the trade but for the purpose of distributing the profit.

(*l*) 7 Tax Cas. 85. (*m*) 7 Tax Cas. 158.

(See " Pit Sinking " under " MINES," p. 278.)

(See *Vallambrosa Rubber Co.* v. *Farmer* (1910) (p. 134) (*n*), where it was decided that expenses of weeding, etc., unproductive parts of an estate, were revenue expenses and allowable, and *Merliman Rubber Estates* v. *I. R.* (1823), where similar expenditure in relation to Excess Profits Duty capital was dealt with.

Instalments.—(See *Foley* v. *Fletcher* (1858) (*o*) and *Taylor* v. *Evans* (1856) (*p*).)

Parliamentary Expenses.—(See *A. G. Moore & Co.* v. *Hare* (1914), at p. 302.)

CATTLE DEALERS.

The assessment of cattle dealers and sellers of milk is governed by Rule 4 to 3rd Case, Schedule D, which enacts that if the lands assessed under Schedule B " are insufficient for the keep of the cattle brought on to the lands," the Commissioners may require a return of the profits and charge such further sum as will, with the Schedule B assessment, amount to the profits arising in the preceding year.

CEMETERIES.

A cemetery company is assessable under No. III. of Schedule A on the profits of the preceding year, and a deduction is not allowable for the estimated cost price of the grave spaces. (See *Edinburgh Cemetery Co.* v. *Kinmont*, [1889] (*q*) (p. 135).)

Upkeep of Lairs.—In *Paisley Cemetery Co.* v. *Reith*, [1898] (*r*) the Company received sums in commutation of the annual charge for the keep of lairs in perpetuity, and it was unsuccessfully claimed that such sums did not represent income.

The LORD PRESIDENT stated in reference to the question—Is Income Tax chargeable where money is received and a per-

(*n*) S. C. 519 ; 47 Sc. L. R. 488 ; 5 Tax Cas. 529.
(*o*) 3 H. & N. 769 ; 28 L. J. Ex. 100 ; 5 Jur. (N.S.) 342 ; 7 W. R. 141.
(*p*) 1 H. & N. 101 ; 25 L. J. Ex. 269.
(*q*) 27 Sc. L. R. 71 ; 17 R. (Ct. of Sess.) 154.
(*r*) 93 J. P. 806 ; 25 R. 1080, 35 ; Sc. L. R. 947.

petual obligation undertaken?—that decided cases are against such a contention, and that the case is indistinguishable from the ordinary one of money paid down with an obligation to provide for certain expenses in the future.

In, however, *London Cemetery Co.* v. *Barnes* (1917) (*s*) the Company received lump sums for maintenance, etc., in perpetuity, of graves, and it was held that the Company could set against those lump sums both the annual expense of maintenance, etc., and the capitalized value of the whole expenditure estimated to be incurred in perpetuity.

In the *Portobello Town Council* v. *Sulley* (1890) (*t*) the Council were required by law to provide a burial ground, and had to repay by instalments capital borrowed to acquire and construct the cemetery, and also had to pay interest on the debt. The receipts exceeded the expenses, and it was decided that the balance was assessable without taking cognizance of the borrowed capital or interest.

(See also "BURIAL BOARD," p. 132.)

CHALK QUARRIES.

Chalk quarries are assessable under No. III. of Schedule A on the profits of the preceding year.

CHARITABLE SUBSCRIPTIONS.

Charitable subscriptions which are of the nature of gratuities are not deductible, but when the subscriptions are made to local charities and institutions such, *e.g.* as hospitals, where the employees may receive direct benefit therefrom, they form an admissible deduction.

(See also "TRADE ASSOCIATION SUBSCRIPTIONS," p. 307.)

CLERGY.

In assessments on clergy, deductions are allowed as follows by Rule 2 of the General Rules to all Schedules :—

> "(1) In assessing the duty chargeable under any Schedule upon a clergyman or minister of any religious denomination the

(*s*) 55 J. P. 9.
(*t*) 2 K. B. 496; 86 L. J. K. B. 990; 117 L. T. 151; 7 Tax Cas. 92.

following deductions may be made from any profits, fees, or emoluments of his profession or vocation :

(*a*) Any sums of money paid or expenses incurred by him wholly, exclusively, and necessarily in the performance of his duty as a clergyman or minister.

(*b*) Such part of the rent (not exceeding $\frac{1}{8}$th), as the commissions by whom the assessment is made may allow, paid by him in respect of a dwelling-house any part of which is used mainly and substantially for the purposes of his duty as such clergyman or minister; and where any such clergyman or minister is in the occupation of a dwelling-house, but pays no rent therefor, he shall for the purposes of the foregoing provision be deemed to pay a rent equal to the annual value of the dwelling-house as assessed to tax under Schedule A.

Rule 2 provides for repayment where necessary.

(See pp. 362–368.)

It was decided in *Lothian* v. *Macrae* (1884) (*a*) that voluntary contributions by an aged minister towards the stipend of an assistant were not an allowable deduction within the above section.

LORD SHAND ruled that—

> "It appears to me that the true reading of these words is,—necessarily in the personal performance of his duty as clergyman—and that they will not cover the case of an arrangement made by which the personal performance . . . is, to some extent, to be devolved upon others . . . the expense of providing an assistant, in order to save to some extent the incumbent of the parish from personally performing his duties, is not expense, which can be said to be necessarily in the performance of that duty, for I think the statute refers to personal performance of that duty."

The following expenses were decided upon in *Jardine* v. *Gillespie*, [1907] (*b*).

Allowed.—Cost of keeping horse and carriage.

An allowance granted by the Court of Teinds for communion elements.

Disallowed.—Expenses incurred in a process of augmentation.

Outlays for pulpit supply during holidays.

(*a*) 22 Sc. L. R. 219.

(*b*) S. C. 77 ; 44 Sc. L. R. 136 ; 14 Sc. L. T. R. 556 ; 5 Tax Cas. 263.

LORD KINNEAR stated that the duty referred to in the statute is a *personal* performance of the duty required of him by his Church, and does not admit, as an equivalent, delegation of duties to another person.

It was held in this case that the above-allowed items were questions of fact, and LORD PEARSON said that "It must be borne in mind that we have only to do with the Commissioners' determination in so far as it is said to be erroneous in point of law."

Rent.—A deduction is allowable for the part of a dwelling house used "mainly and substantially" for the purpose of the duty of a clergyman or minister of any denomination up to one-eighth of the rent (*ante*). It is not necessary that the particular parts of the house should be *solely* used for the purposes of the clergyman's duty.

The assessments on Clergymen are mainly under Schedule E, under which Schedule Easter Offerings and other emoluments are charged.

(See Schedule E, p. 360, and Schedule A, p. 16.)

CLUBS.

The assessment of clubs raises the question of the assessability of mutual concerns. The latter are not generally assessable, as no profits in the sense of the Income Tax Acts are made. Subscriptions are paid by members in return for the privileges attached to the club, but any excess of income over expenditure in a purely mutual club is not assessable to Income Tax. That the excess is not profit may be seen from the fact that if its assessability were maintained, the club could easily avoid taxation by so adjusting the subscriptions as to meet, as nearly as possible, the expenses. Moreover, the subscriptions could be fixed on a low basis with a provision of membership that, at the end of the year, any deficiency should be made good by equal contributions of all the members.

(See *New York Life Insurance Co.* v. *Styles* (1889) (*c*)

(*c*) 14 App. Cas. 381; 59 L. J. Q. B. 291; 61 L. T. 201.

under "Insurance," p. 250, which decided that in a mutual Insurance Company, the persons who agree to contribute to a common fund for mutual insurance could not be regarded as carrying on a trade. See also p. 160.)

In *Dublin Corporation* v. *McAdam* (1887) (*d*) PALLES, C.B., said that—

> "in order to bring this case within the operation of the Income Tax Act, it is necessary that there shall be this trading in its strict true sense. There must be, at least, two parties—one supplying water, and the other to whom it should be supplied, and who should pay for it. If these two parties are identical, in my opinion there can be no trading. No man, in my opinion, can trade with himself; he cannot, in my opinion, make, in what is its true sense or meaning, taxable profit by dealing with himself; and in every case of this description it appears to be a question on the construction of the Act whether the two bodies—the body that supplies and the body or class that has to pay—were either identical, or, upon the true construction of the Act, must be admitted to have been held by the Legislature to be identical, and so legislated for upon that basis."

Bank Interest.—Where a club receives interest from a bank deposit, such interest is taxable—even though the club is strictly mutual—as interest is a separate subject matter of assessment (see p. 266).

Golf Clubs.—In *Carlisle and Silloth Golf Club* v. *Smith*, [1913] (*e*) the club was an ordinary *bonâ fide* members' club and was unincorporated. There was a covenant imposed by the lessor in the lease, that the club would admit non-members to play on its course on payment of green fees to be fixed by the lessors, but not to be below a minimum fixed in the lease. The green fees paid by the non-members passed into the general accounts of the club. The accounts showed an excess of income over expenditure.

It was held that the club was assessable in respect of profits from non-members.

(*d*) 20 L. R. Ir. 497.

(*e*) 3 K. B. 75; 82 L. J. K. B. 837; 108 L. T. 785; 57 Sol. Jo. 532; 29 T. L. R. 508; 11 L. G. R. 710, C. A.

The club receipts consisted of :—

(*a*) The subscriptions of members.

(*b*) Locker rents from members.

(*c*) Profits on the sales of supplies of refreshments, alcohol, and mineral waters, appearing in the club's income account under the head of " Steward's Account."

(*d*) Green fees (being the receipts from visitors) appearing in the club's income account under the head of " Visitors' Tickets."

The expenses necessarily incurred in maintaining the club exceeded the amounts received from green fees from visitors, and the club contended that, being an ordinary *bonâ fide* members' club, and not an association carrying on the business of letting out golf links for profit, there was no liability to assessment, and that in any case there were no profits assessable, as the total annual expenditure incurred in maintaining the links in a proper condition exceeded the total fees received from visitors. The Inspector of Taxes urged that the club was in receipt of profits or gains which, if not within Case 1 of Schedule D, came within Case 6 on all " annual profits or gains " not charged by any other Schedule, and that it was not sought to assess any surplus arising from members' subscriptions.

The assessment was calculated " by taking from the total visitors' fees for the year, such proportion of the total of all expenses applicable both to members and visitors, as the said fees bear to the total annual income of the club."

HAMILTON, J., decided that—

> " Now it seems to me that . . . constitutes engaging in the carrying on of an enterprise which is in itself outside the scope of the Club and is distinct from the ordinary objects and activities of the Club."

He stated that the connexion with non-members could be isolated.

His Lordship disapproved of the method of calculating the assessment (*ante*), and stated that the profits must be real profits, and they can only be arrived at after " ascertaining

whether there is not, as one would certainly expect there would be, something to come off the gross before arriving at the net sum." The case was sent back to the Commissioners for the figures to be gone into with a view to ascertaining "the real apportionment of the total expenses of the club on common items which fall to the visitor and do not fall to the members."

The case was taken to the Court of Appeal, and the MASTER OF THE ROLLS said that—

> "I cannot draw any distinction between gate-moneys, which might be, and I believe sometimes are, received by a golf club, and green moneys. In each case the Club would be assessable." . . . "If a landowner laid down upon his land a golf course and charged fees for admission and user—if, that is to say, the links were a proprietary golf links carried on with a view to profit—there can be no question but that the proprietor would be assessable. The adventure of maintaining golf links and charging for the use of them is an 'adventure or concern in the nature of a trade.'"

The contention of the club that the expenses each year exceed the receipts from visitors' green fees was characterized as irrelevant upon the question whether the club was assessable:

> "For the determination of this case, it is only necessary to say that the Club as an association (like the proprietary owner of a golf links) is receiving payments from third parties, and that the balance of profits or gains after debiting against those receipts such sum as may be proper by way of expenditure is a profit going into the pocket of the Club in respect of which it is assessable. The fact that in the pocket of the Club it saves the pocket of the member by reducing in his favour the current expenditure which otherwise he would have to bear is not a material circumstance for the purpose of ascertaining whether the Club as a society has made a profit or not."

KENNEDY, L.J., held that the Club was liable to assessment "in respect of their receipts from visitors," and he ruled that "Whether, when the account is properly taken, there is any profit balance, and what the proper method of assessment is, this Court has not to decide on the appeal before us."

Basis of Assessment.—The method of arriving at the assessable profit in respect of non-members is, in practice, as follows :—

Assume the gross takings to be £4000 and the part thereof derived from non-members' green fees as £1500. The gross profits are £500 and there is a Schedule B assessment (p. 39) of £200.

The net profit would therefore be :—

	£
Gross profit	500
Less Schedule B assessment . . .	200
	300

The net profit of £300 would be divisible between the members and non-members as follows : there of course being no question of assessability in respect of the part applicable to members :—

		£	£	*s.*	*d.*
Members . . .	$\frac{25}{40}$	of 300 =	187	10	0
Non-members . .	$\frac{15}{40}$	,, =	112	10	0
			300	0	0

The assessment on the Club would therefore be £112 10*s*.

An alternative method which is supportable in law is to divide the *gross* profit as follows :—

		£	£	*s.*	*d.*
Members . . .	$\frac{25}{40}$	of 500 =	312	10	0
Non-members . . .	$\frac{15}{40}$	,, =	187	10	0
			500	0	0

	£	*s.*	*d.*
Non-members' part	187	10	0
Less Schedule B assessment . .	200	0	0

This would give no assessable profit.

The legality of this method is governed by the admitted fact that the profits of a Club, apart from the question of non-members' fees, are not assessable (*ante*), and that Schedule B is assessment on *profits* derived from the occupation of

lands, which profits are of course those derived from the income of the Club. As the latter has therefore paid tax on *profits* of £200 whereas the assessable profit is only £187 10*s.*, a further assessment under Schedule D should not be made when the Schedule B assessment exceeds the profit apportioned to non-members. A further question arises in the extension of the exemption for "mutual" operations to Schedule B, and as the latter is clearly assessment on *profits* (see p. 39), sec. 208 of the 1918 Act (p. 58), may be invoked to extend the applicability. The Schedule B assessment in no way differs from Schedule D assessment except that in the former the profit is an arbitrary estimate while in the latter the actual profit is taken.

Clubs with Limited Liability.—Clubs, in some cases, adopt limited liability, with shares of a nominal value of *e.g.* 1*s.* each, and it is a condition of membership that one share (and no more) is held. These conditions do not take a Club out of the category of mutual concerns.

Holiday Clubs.—Holiday clubs are formed annually for the purpose of furnishing facilities for making holiday savings, and the question of liability to bank interest on the deposited savings arises, but, in practice, the assessment is restricted to the proportion of interest applicable to members who are liable to Income Tax by reason of their income being in excess of the exemption limit. (See p. 341.)

(See also "CLUBS," under Schedule A, p. 405.)

COAL DUES.

Coal dues received by the Brighton Corporation were held to be assessable. The Corporation were empowered to levy a "rate or duty" on coal landed on the beach, or otherwise brought into Brighton, and the rate was to go to a common fund to be expended in connexion with paving, lighting, and other municipal work, *A.-G.* v. *Black* (1871) (*f*).

(*f*) L. R. 6 Ex. 308; 40 L. J. Ex. 194; 25 L. T. 207; 19 W. R. 1114; 1 Tax Cas. 52.

COMMISSION.

In ascertaining commission based on profits the latter are to be taken as inclusive of Income Tax as was laid down in *Johnston* v. *Chestergate Hat Manufacturing Co., Ltd.* (1915) (*g*). In the latter case a manager was entitled, under agreement, to a certain salary plus, at the end of the year, after the profits had been certified by the auditors, a sum equal to one-third of the first £600 of the net profits for the whole of the year, and also a sum equal to one-quarter of the second £600 of such net profits, and a further sum equal to one-sixth of all such net profits over and above the sum of £1200. The agreement defined "net profits" as meaning "the net sums available for dividends as certified by the auditors of the company after payment of all salaries . . . rent, interest at the rate of 5 per cent. per annum upon capital, and after making such allowances for depreciation as the auditors of the company may advise." New auditors certified under the above clause that the net profits available for dividends were an amount *less* Income Tax, and the latter was debited in the Profit and Loss account. In deciding in favour of the manager Mr. JUSTICE SARGANT held that Income Tax is *part of the profits* and, . . . , not a deduction in arriving at profits, and that when the auditors' certificate had been given on a wrong principle it was not conclusive.

COMMUTATION OF SALARY.

(See "CAPITAL," p. 142.)

COMPENSATION LEVY.

(See "BREWERY," p. 103.)

COMPENSATION TO WORKMEN.

Compensation paid to workmen in connexion with accidents is a deductible expense.

(*g*) 2 Ch. 338.

CONCILIATION BOARD EXPENSES.

Contributions paid by a colliery company in the form of a levy made by a Coalowners' Association, and devoted to defraying expenses of the Scottish Conciliation Board, are a deductible allowance: *Lochgelly Iron and Coal Co., Ltd.* v. *Crawford*, [1913] (*h*). The Conciliation Board is a means of settling disputes between the employer and the workmen, and the LORD PRESIDENT held that "it was a machinery which the coalowners were entitled to keep up just as one might, as proper expenses, have a legal secretary."

(See "MINES," p. 276.)

CO-OPERATIVE STORES.

Co-operative societies have no legal exemption from Income Tax, but, as the majority of the shareholders are not liable to Income Tax by reason of their respective total incomes not exceeding the exemption limit (see p. 341), the ordinary practice of assessing the concern on the profits and leaving the concern to deduct and retain tax from the dividends paid, is not followed. No assessment under Schedule D is made, but any liable *shareholders* are assessed direct on the dividends received from share capital. This procedure avoids considerable trouble which would otherwise result to the shareholders in claiming repayment of the tax deducted on payment of dividends, and to the Revenue in investigating such claims.

In the case of those Co-operative Stores which do not possess the preponderating exemption element, the Schedule D assessments are made in the ordinary manner and tax is deducted from the dividends. (See p. 390.)

The "dividends" paid to *members* on purchases made, are not taken as assessable profit. A Departmental Committee on Income Tax considered this question in 1905, and referred to the nature of these "dividends" which do not form taxable profit, but merely arise from the fact that the prices charged to members are in excess of cost price, and that if the goods

(*h*) S. C. 810; 50 Sc. L. R. 597.

were distributed at cost price there would be no "dividend" and therefore no basis on which Income Tax could be assessed. The Committee described the "dividend" as merely a return to members "of sums which they have paid for their own goods in excess of the cost price," and as the system conduces to thrift the Committee saw "no reason for discouraging it." (See also p. 258.)

Co-operative Societies have no exemption from Schedule A.

Co-partnership Schemes.

Companies having co-partnership schemes may claim to be allowed to pay dividends in full to exempt workmen in respect of co-partnership stock, provided that the dividend warrant contains the following clause :—

"I hereby certify that, in accordance with arrangements made with the Board of Inland Revenue the amount of dividend mentioned below (or this dividend) is paid without deduction of Income Tax, and that no claim to repayment of Income Tax thereon will therefore be allowed."

The dividends applicable to the exempt workmen would be deducted in arriving at the Schedule D assessments of the Company.

Damages.

Damages awarded to a guest staying at an inn under the management of a brewery company, through injuries sustained from a falling chimney, were disallowed in *Strong & Co., Ltd.* v. *Woodifield*, [1906] (*h*) dealt with at p. 89.

(See also "Legal Costs," p. 271, and *Royal Insurance Co.* v. *Watson* (1897) (*i*), p. 142.)

Dead-Rent.

A deduction is not allowable in respect of recoupments of dead-rent. A minimum dead-rent has to be paid when the royalties do not reach such rent, but any surplus of dead-rent

(*h*) A. C. 448 ; 75 L. J. K. B. 864 ; 95 L. T. 241 ; 22 T. L. R. 754.
(*i*) A. C. 1 ; 61 J. P. 404 ; 66 L. J. Q. B. 1 ; 75 L. T. 334.

over royalties in a particular year may be recouped in future years when the royalties exceed the dead-rent. The mine is, however, assessable on its profits before deduction of surplus royalties recouped, although in the previous years the dead-rent had been assessed before the mine had begun to work. *Broughton and Plas Power Coal Co., Ltd.* v. *Kirkpatrick* (1884) (*k*).

Assume the Minimum Royalty to be £1000 per annum, and that in a particular year the Royalty *actually* due, as based on *e.g.* tonnage of coal, was only £600. The full Royalty of £1000 would have to be paid, but, for commercial purposes, the excess of £400 would be carried forward, thus if in the subsequent year the Royalty *actually* due amounted to £2000, the payment to the Royalty owner would be £1600. For Income Tax purposes, however, the £1000 would be disallowed as a deduction for the 1st year, and the full £2000 would be similarly disallowed for the second year.

(See p. 306.)

The reason of non-deduction generally is that the payer is entitled to deduct tax from the payments, but he cannot deduct tax in excess of the actual payment of tax.

(See also "MINES," p. 276.)

DEBENTURE EXPENSES.

The expenses attending the issue of debentures such, *e.g.* as commission paid to brokers, stamps on debentures, printing, advertising, etc., do not form an admissible deduction. In *Texas Land and Mortgage Co.* v. *Holtham* (1894) (*l*) the mortgage company issued debentures in order to raise money, which they lent at a higher rate of interest.

MATTHEW, J., in refusing the deduction, stated that the amount paid in order to raise money on debentures, comes off the amount advanced upon the debentures, and is therefore so much paid for getting the money, but that there cannot be one law for a Company having sufficient money to carry on all its

(*k*) 14 Q. B. D. 491 ; 49 J. P. 119 ; 54 L. J. Q. B. 268 ; 33 W. R. 278.
(*l*) 10 T. L. R. 337.

operations, and another for a Company which is content to pay for the accommodation.

In practice, a Mortage and Investment Company is allowed to deduct the cost of renewal of existing debentures, but the cost of raising fresh capital by debentures is disallowed.

DEBENTURE INTEREST.

The interest paid by an English Company, with works abroad, to foreign debenture holders in respect of debentures secured on foreign property, is not an allowable deduction: *Alexandria Water Co.* v. *Musgrave* (1883) (*m*).

The question was raised as to the power of the Company to deduct tax from the foreign debenture holder when paying the interest, and the MASTER OF THE ROLLS was unwilling to give an opinion thereon. It would appear that the Company would not possess the right to deduct tax as, although the Income Tax law may authorize deduction, it cannot compel a foreigner to accept the reduced interest when the security is on foreign property, and therefore out of the control of the British Courts. If no condition for deduction had been imposed on the issue of the debentures it would appear that the debenture holder would be able to realize the security, on the company refusing to pay the interest in full. (See *Gresham Life Assurance Society* v. *Styles*, [1892] (*n*), p. 254.)

(See "FREE OF TAX" under "DIVIDENDS," p. 193.)

DEFALCATION.

A deduction is allowed in practice for the loss arising from defalcations of employees.

DEPRECIATION.

An allowance is permitted for "wear and tear," but there is no specific legal provision fixing the percentage rates to be

(*m*) 11 Q. B. D. 174; 52 L. J. Q. B. 349; 49 L. T. 287; 33 W. R. 146, C. A.

(*n*) A. C. 309; 56 J. P. 709; 62 L. J. Q. B. 41; 67 L. T. 479; 41 W. R. 270; 3 Tax Cas. 185.

granted, although in certain cases (*post*) arrangements have been made by which, for the industries concerned, a fixed percentage pertains in practice, but these arrangements are not statutorily binding on any party.

The depreciation allowance applies only to machinery and plant ; leaving, *e.g.*, buildings and leases outside the allowance, but an allowance is made for " mills, factories and similar premises " (p. 97).

The amount of the allowance is left solely to the discretion of the Commissioners by the words as they " may consider just and reasonable " in Rule 6 to Cases 1 and 2 of Schedule D (*post*), and therefore the *amount* cannot be questioned in the Courts on a case stated (see p. 334). Rule 6 (7) allows the matter to be taken to a Board of Referees by *a representative number* of a *particular trade* or business. The Board cannot deal with an individual's application. As the Acts do not give specific percentages on the values of machinery and plant, it will thus be seen that the Commissioners are empowered to grant such allowance as is, from a commercial point of view, just and reasonable. This fact is of considerable importance as, generally, the allowance is restricted, in practice, on the urging of the Crown, to 5 per cent. on the written-down value of the fixed machinery and plant. The Commissioners are, however, able to meet the peculiar exigencies of any case, and when, *e.g.*, machinery is running night and day, an allowance may be made to cover the increased depreciation. There is no limit to the allowance except that it must be " just," and the Commissioners are the despotic judges as to what is " just," therefore there is ample power in the Commissioners to allow what is sufficient in a commercial sense.

In several instances the Revenue has agreed specific allowances (p. 180).

Repairs are deductible by Rule 3 to Cases 1 and 2 of Schedule D, and an option is vested in the taxpayer of taking an estimated allowance for " wear and tear " or of debiting under Rule 3 (*ante*) the actual cost of Renewals. The exercise of the option

is a matter to be decided on the facts of a particular case. As regards loose tools, "wear and tear" is not usually allowed as renewals are debited.

Fixtures and Fittings.—Depreciation of fixtures and fittings is now allowed in practice when they are of a permanent and durable nature, paid for out of capital and not subject to frequent renewal. With, *e.g.*, hotels the general practice is to charge renewals instead of depreciation, but, in some instances 8 per cent. of the turnover is taken as a measure of the depreciation of *all* items.

The **Law** involved is as follows :—

Rule 6 to Cases 1 and 2 of Schedule D :—

(1) In charging the profits or gains of a trade under this Schedule such deduction may be allowed as the Commissioner having jurisdiction in the matter may consider **just and reasonable,** as representing the diminished value by reason of wear and tear **during the year** of any **machinery or plant** used for the purposes of the trade and belonging to the person by whom it is carried on.

(2) Where machinery or plant is let to the person by whom the trade is carried on, on the terms of his being bound to maintain the same and deliver it over in good condition at the end of the lease, the machinery or plant shall be deemed to belong to that person for the purpose of this rule.

(3) Where full effect cannot be given to any such deduction in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the deduction, the deduction or part of the deduction to which effect has not been given, as the case may be, shall, for the purpose of making the assessment for the following year, be added to the amount of the deduction for wear and tear for that year, and deemed to be part of that deduction, or, if there is no such deduction for that year, be deemed to be the deduction for that year, and so on for succeeding years.

(4) Any claim in respect of the aforesaid deduction shall be included in the annual statement required to be delivered under this Act of the profits or gains of the trade for which the machinery or plant is used, and the additional commissioners in assessing those profits or gains, shall make such allowance in respect thereof as they think just and reasonable.

(5) Where machinery or plant is let upon such terms that the burden of maintaining and restoring it falls upon the lessor, he

shall be entitled, on presenting a claim to the general or special commissioners, to have repaid to him such a portion of the sum assessed and charged in respect of the machinery or plant, and deducted by the lessee on payment of the rent, as shall represent the tax upon an amount which the Commissioners consider just and reasonable as representing the diminished value by reason of wear and tear of the machinery or plant during the year :

No such claim shall be allowed unless made within twelve months after the expiration of the year of assessment.

(6) No deduction for wear and tear or repayment on account of any such deduction, shall be allowed for any year if the deduction, when added to the deductions allowed on that account for any previous years to the person by whom the trade is carried on, will make the aggregate amount of the deductions exceed the actual cost to that person of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on the machinery or plant by way of renewal, improvement, or reinstatement (see p. 164).

(7) Where an application is made to the Commissioners of Inland Revenue for the alteration of the amount of any deduction for wear and tear, the Commissioners, unless they are of opinion that the application is frivolous or vexatious, shall refer the case to the Board of Referees, and that Board shall, if they are satisfied that the application is made by or on behalf of any considerable number of persons engaged in any class of trade or business, take the application into their consideration, and determine the deduction to be allowed.

The 1905 Departmental Committee on Income Tax reported as follows on the definition of " wear and tear " in Rule 6 (*ante*).

The interpretation of this enactment has formed the subject of more than one reference to the courts, and even now it does not appear to be quite clear whether the judicial decisions obtained require the section to be read as meaning no more than this, that loss by depreciation may be allowed, even though no expenditure has been incurred in making it good by repairs, or as meaning that, after all damage by wear and tear has been made good by repairs, short of renewal, a further allowance may be made in respect of the imperceptible and irremediable deterioration due to age.

The opinion of the Board of Inland Revenue and the practice follows the latter and more liberal interpretation, which seems to us the correct one.

See *Union Cold Storage* v. *Jones* (1923), where foreign buildings and plant were let to a foreign company and allowance for depreciation was refused.

Obsolescence.—The depreciation allowances does not provide against a loss arising from machinery or plant becoming

obsolete owing to the evolution of more up-to-date machinery or plant, but Rule 7 to Cases 1 and 2 of Schedule D gives an allowance which ensures allowance of the total and actual loss. Assume that a machine cost £1000 and its "written down value," *i.e.* after deducting the aggregate depreciation allowed, is £500 when it is sold, owing to being out of date, for £100, an allowance of £400 is given on *renewal* of the machine, by Rule 7 which reads as follows :—

> In estimating the profits or gains of any trade, manufacture, adventure, or concern in the nature of trade, chargeable under this Schedule, there shall be allowed to be deducted as expenses incurred in any year so much of any amount expended in that year in *replacing* any plant or machinery which has become obsolete as is equivalent to the cost of the plant or machinery replaced after deducting from that cost the total amount of any allowances which have at any time been made in estimating profits or gains as aforesaid on account of the wear and tear of that plant and machinery, and any sum realized by the sale of that machinery or plant.

The allowance for obsolete machinery was instituted, *in practice*, in 1897 by the following communication from the Treasury, but no steps were taken to bring this concession before the public, in fact even the District Commissioners have received no notification of the suggestion contained in the letter :—

Treasury Chambers,
Whitehall, S.W.,
May 28, 1897.

DEAR SIR,

The Chancellor of the Exchequer has had under his consideration the memorial of the Association of the Chambers of Commerce of the United Kingdom, which you sent him at the beginning of April.

The chief points raised in the memorial are as follows :—

1. That the allowances in respect of repairs and depreciation of machinery are insufficient, and the methods of calculating such depreciation are unsatisfactory.
2. That no allowance is made for the cost of replacing machinery which has become obsolete.

As to the first point, I am to say that, as the law now stands, deductions are allowed both in respect of expenditure incurred in repairs or alterations of machinery according to an average of the three years preceding the year of assessment,

and also in respect of the diminished value of machinery by reason of wear and tear during the year. The allowance of these deductions is in the hands of the district or special Commissioners as the case may be, and they have to decide in each case as it arises the adequacy of the deductions allowed.

As to the second point, I am to say that the Board of Inland Revenue have given instructions to their Surveyor at Leicester, which is particularly referred to in the memorial, that, where claim is made in respect of the introduction of more modern machinery in a factory, no objection is to be taken to the allowance, as a deduction from the assessable profits of the year, of so much of the cost of replacement as is represented by the existing value of the machinery replaced. Any excess in the cost of the new machinery over the actual present value of the old, is an addition to the capital of the business, and cannot properly be regarded as a charge upon revenue for the purposes of income tax assessment.

I am to add that similar instructions will be given to surveyors in other districts when this question arises there.

I am, Sir,
Your obedient Servant,
(Signed) W. A. MOUNT.

The Secretary,
Association of Chambers of Commerce.

The "existing value of the machinery replaced" means the value as written-down for Income Tax purposes less the sale value.

The item "Additions to Machinery and Plant" in the balance sheet would represent "Additions less sales."

The allowance was strictly one of practice, as it had no statutory authority prior to 1918, and in *London County Council* v. *Edwards* (*post*), which was decided in 1909, CHANNELL, J., expressed the opinion that "there is no ground whatever for saying that the Appellants would have any deduction for such depreciation as was occasioned by their plant becoming obsolete, and getting out of fashion.

It is advisable to retain particulars of individual machines to facilitate the calculation of the amount admissible for obsolescence on replacement taking place.

It is not necessary that the replacement should be by machines of exactly the same manufacturing purpose, and there should not obviously be such a distinction, as the allow-

ance, in effect, merely permits the deduction on replacement of the written-down value of scrapped obsolete machinery, less the scrap value, or, if it has a sale value outside the particular concern to which it belongs, less such sale value.

Stud Farms.—In *Earl of Derby* v. *Aylmer* (1915) (*p*), two stallions were bred by the appellant and valued at £60,000. A claim was made under Rule 6 (*ante*) that the value should be written down for Income Tax purposes by a uniform annual rate of depreciation based on the normal useful life of stallions, which life was estimated as 18 years. The decision was against the appellant as it was held that the stallions were not within the Act by reason of their diminished breeding value, but that the reduced value was comparable with investment of money in a wasting asset (see p. 134). Mr. JUSTICE ROWLATT specifically pointed out that the ruling did not apply to horses used for trade purposes.

Succession.—The provisions of Rule 6 (3) as regards carrying forward unallowed depreciation indefinitely was dealt with in *Scottish Shire Line, Ltd.* v. *Lethem* (1912) (*q*). A Limited Company was formed with the object of taking over the business of another Limited Company, and it was claimed that the unallowed depreciation should be carried forward to the new Company, but the Inspector of Taxes contended that the allowance was personal to the old Company.

It was held that the claim should be allowed.

In this case the new Company were assessed, as *successors* to the old Company, under Rule 11 to Cases 1 and 2 of Schedule D (see p. 69) on the average of profits of the three preceding years while the business was in the hands of the old Company, but had a *specific cause* been proved under the said Rule (see p. 71) a different question may have arisen.

LORD DUNDAS pointed out that the Appellants' business was the same as that of the old Company and that the shareholders were practically (though not identically) the same.

(*p*) 3 K. B. 374 ; 84 L. J. K. B. 2160 ; 139 L. T. 1005 ; 31 T. L. R. 528.
(*q*) S. C. 1108 ; 49 Sc. L. R. 792 ; 6 Tax Cas. 91.

"It was urged for the Crown that the deduction for wear and tear is a personal allowance; and that the Appellants are not entitled to an allowance in respect of the deductions for wear and tear to which full effect could not be given in preceding years while the plant and machinery were the property of their predecessors. I cannot accept this view. The language of the sub-section is conceived in broad and general terms, and does not (I must assume intentionally) strike any personal note. The references in sub-sec. 2 (now Rule 6 (6)) to the 'person' seem important rather by way of contrast than as supporting the Crown's contention. Again, sub-sec 4 (of the 1907 Act, which defined wear and tear as being that allowable under the 1878 Act), while it takes one back to sec. 12 of the 1878 Act (now Rule 6 (1)), does not repeat, but omits, the words of personal limitation with which that section concludes. The Crown has treated the Appellant Company as the old Company by taking that Company's profits during the preceding years as the basis for assessing the Appellants' profits for 1910. I think it would be anomalous if we were to permit the Crown to treat the Appellants as a new and different concern when it comes to the matter of the wear and tear deduction. For the reasons now shortly summarized, I think the determination of the Commissioners was wrong, and that the Appellants are entitled to succeed."

LORD SALVESEN admitted that there was a difference in legal *persona* between the two Companies, and he also said that where the legislature intended a distinction of the kind in question to be made "it would . . . appear that those who framed the Act knew how to express it in clear and distinct terms." His Lordship said that as the Appellants were admittedly assessable on the same footing as the old Company he could see no reason why they should not be entitled to the same allowances as the old Company would have been had they continued. The contention that the Appellants had acquired depreciated assets for which allowance had been made in fixing the purchase price was irrelevant as capital was not assessable. If the Crown's arguments were sound an immaterial change in a partnership would deprive the remaining partners of the deduction.

Basis of Allowance.—The allowance for depreciation is calculated on the probable life of the items comprising the machinery and plant so as to arrive at an estimated average

which will comply with the requirements of the words "just and reasonable." The wear and tear *during the current year of assessment* is the basis of computation, and the percentage is taken from the capital value of the machinery and plant as written down year by year for Income Tax purposes, thus, as the amounts written off by the trader often differ from those written off by the Revenue, the capital value for Income Tax purposes generally differs from that appearing in the balance sheet. In *Cunard Steamship Co.* v. *Coulson* (1899) (*r*) the Company claimed depreciation in respect of the average of the three preceding years on which the assessable profit is calculated, but it was held that the *assessment* should be made irrespective of the allowance for depreciation, the deduction for which is only that estimated as for the year of assessment.

This case did not arbitrarily lay down that the basis is the value at the beginning of the year of assessment, but the Commissioners had allowed depreciation on that basis, and it was held that such basis was within the 1878 Act, and that the *average* was not in compliance with the Act. The words "diminished value . . . during the year" strictly refer to the depreciation in the year of assessment, but, as the Commissioners are vested with a discretionary power as to what constitutes a "just" amount, their allowance, in reality, is final.

The following example illustrates the method of allowing depreciation :—

YEAR 1922–23.

	£	£
Written down value of machinery and plant at 31st March, 1921 . . .	20,000	
Less depreciation allowed for 1921–22 .	1,000	
		19,000
Plus additions during year to 31st March, 1922		6,000
Value at 31st March, 1922 . . .		25,000
Depreciation for 1922–23 at 5 per cent. on £25,000 . . .		£1,250

(*r*) 1 Q. B. 865; 68 L. J. Q. B. 554; 80 L. T. 326; 15 T. L. R. 285; 4 Tax Cas. 63.

As the allowance for depreciation is on the diminishing value, it will be seen that the value would never be entirely written off. Assuming that machinery valued at £100 and with a life of twenty years were depreciated by 5 per cent. on the diminishing value there would still be a value of about £36 remaining at the expiration of the period of twenty years. Similarly, depreciation by 7 per cent. would give a remaining value of £21 and 10 per cent. would give £12. The Income Tax law has no provision for dealing with these remaining values. and if the scrap value were £5 there would be an obsolescent item of £31, £16, or £7, which would have disappeared without being allowed for in the Income Tax Assessments. To meet this difficulty an allowance may be made—in practice—for obsolescence (*ante*).

The basis being the *diminished value* during the year it is clear that the allowance must be made on the actual *value*, therefore if a claim has not been made for depreciation it is only legally possible to claim on the *present* value, not on the original value, but when, *e.g.*, machinery has been acquired at a cost below *market* value the depreciation should be calculated on the *actual* value.

Revaluation.—When, in the case of non-availability of figures of cost, a revaluation of the machinery and plant, or the first professional valuation, shows that the values appearing in the balance sheet are too low, a claim should be made that the enhanced value should be substituted for the existing Income Tax value, assuming that the latter was originally based on the balance sheet value at the time. This may be opposed by the Crown on the grounds that the Income Tax value being a written-down one, and the depreciation having been allowed at a different rate from that adopted in the balance sheet, there is not a sufficient identity between the Income Tax value and the balance sheet value to permit of alteration. It is obvious, however, that the original Income Tax value coincided in all probability with the balance sheet value, and as both values were thus, initially, equally

under-estimated, there is no legitimate reason why the revaluation should not be adopted. A different aspect of the question would of course arise if the increased value were merely the effect of past writing-down (for Income Tax purposes) by excessive depreciation or increase in market value. Rule 6 (6) makes the maximum depreciation the *cost*. If the written-down Income Tax value exceeds that of the revaluation there is *primâ facie* evidence of insufficiency of past Income Tax allowances.

Renewals—Railway Company.—In *Caledonian Railway Company* v. *Banks* (1880) (*s*) the Company were allowed sums expended for repairs and renewals of rolling stock, and a further allowance in respect of wear and tear of newly-added stock which had not required any repair or renewal, was claimed. LORD GIFFORD held that the railway cannot get deduction for deterioration twice over—first, by deducting the actual expense of repair and renewal, and then by deducting an additional estimated sum for the same thing. A distinction cannot be made between old and new plant, and his Lordship further pointed out that the assessment had been made in entire accordance with the Company's accounts. Only actual depreciation may be taken into account.

LORD JUSTICE CLERK stated that—

> "I do not think that the words (*diminished value*) had any reference to the value of the plant as merchantable or marketable articles, because its capacity to earn income constitutes its sole value to the Railway Company, and is the only quality contemplated under the statutes relating to the taxation of income. I am the more confirmed in this impression by the terms of the second part of the first paragraph of the 12th section, relative to the valuation of plant in the hands of a tenant under an obligation to restore it to the owner in as good condition as it was when he received it. By the terms of the section such plant is to be held to belong to the tenant, and is to be settled with for income tax on precisely the same principles as it would have been if he had been the proprietor, but it is plain enough that if the plant is restored as it was by the tenant under such a contract within the first five years of its existence, assuming that no repairs or renewals are required during that period, his obligation is fulfilled, and he could have

(*s*) 18 Sc. L. R. 85; 8 R. 89; 1 Tax Cas. 487.

no possible interest in the marketable value of an article which he had no power to sell."

(See p. 164.)

His Lordship further held that the amount of the "diminished value by reason of wear and tear" is a question of *fact* for the Commissioners, not for the Court.

Harbours.—In *Dumbarton Harbour Board* v. *Cox* (1918) (*t*) the Board had to dredge the harbour and contended that depreciation should be allowed and that the harbour bed was "machinery or plant." The Court rejected the contentions.

Tramways.—(See also Arrangements, p. 183.) The question of the despotic jurisdiction of the Commissioners was raised in *London County Council* v. *Edwards* (1909) (*a*). The Council had acquired some horse tramways and proceeded to reconstruct them for electric traffic. Only part of the track was completely worn out at the time of reconstruction, there being an average unexhausted life of the horse rails replaced of eight years. The agreed practice had been to allow deduction of the actual renewals, but the Council claimed that the deduction should not be restricted to renewal of the rails wholly exhausted, but should include allowance for the partial exhaustion of the remainder of the track which had been reconstructed, or alternatively, depreciation should be allowed.

It was held that no question of law was involved and that therefore the Commissioners' decision was final.

CHANNELL, J., held that the question was one of fact and stated that he did not quite agree that a new thing cannot be depreciated by wear and tear, and that as long as the thing in question is fit to do its work and does not require replacing there is no diminution in value by wear and tear. The value of a thing depends to a certain extent not only upon its present use, but upon the period which it is likely to last. A rail which is fit to use now, and to use for two years more, is not so valuable as a rail which is quite new, and will be fit to use for

(*t*) 56 Sc. L. R. 122; 7 Tax Cas. 147.
(*a*) 73 J. P. 213; 100 L. T. 444; 25 T. L. R. 319; 5 Tax Cas. 383.

20 years, and the difference is a diminution caused by wear and tear, and a diminution of value by wear and tear within the meaning of this section. Consequently it is a fallacy to say because this plant is all new, and because nobody would think of doing anything to it at the end of one year only, when it has had only one year's wear and tear, that it is not diminished in value at all.

Ships.—In *Burnley Steamship Company* v. *Aikin* (1894) (*b*) a claim was made, in addition to depreciation by wear and tear, for :—

(*a*) Loss of earning power owing to the ship having become more or less obsolete ;

(*b*) Diminution in market value apart from that caused by wear and tear.

It was held that the claims for (*a*) and (*b*) could not be admitted.

The LORD PRESIDENT ruled that the words " diminution of value through wear and tear " in a year plainly point to the physical deterioration going on in the subject which is being considered, and to bring in under these words the fact that relatively the ship is now of less value because during the year other people have built better ships strains the language in a way which is entirely unwarranted.

LORD MCLAREN said that " wear and tear means nothing more than the physical depreciation of the subject apart from its being rendered less useful by the discovery of better machinery or better modes of doing the same thing."

In *Leith, Hull, and Hamburg Steam Packet Company* v. *Bain* (1897) (*c*), the Commissioners had allowed $5\frac{1}{2}$ per cent. on written-down value of the whole fleet, but the company claimed a larger allowance. The LORD PRESIDENT commented on the " abominably badly stated case " and refused the appeal.

Interest.—In *Leith, Hull, and Hamburg Steam Packet Company* v. *Musgrave* (1899) (*d*), the Commissioners, in fixing the wear and tear allowance, took into account that the sum

(*b*) 31 Sc. L. R. 803 ; 21 R. 965 ; 3 Tax Cas. 275. (*c*) 3 Tax Cas. 560.
(*d*) 1 F. 1117 ; 36 Sc. L. R. 745 ; 4 Tax Cas. 80.

allowed annually might be invested and produce interest at three per cent. per annum. The Court decided that the Commissioners were not entitled to take cognizance of the interest.

LORD TRAYNER stated that Rule 6 allowed such sum as would represent diminished value by wear and tear, so that when worn out the plant may be replaced, as the shipowner would be possessed of a sum equivalent to the original cost of the vessel. He was of the opinion that a reasonable way of ascertaining the amount of the deduction would be to spread the original cost over the average life of a steamer.

LORD MONCRIEFF held that the statute does not contemplate any inquiry into the prospective use which may be made by the taxpayer of the deductions allowed.

In the *P. and O. Steam Navigation Co.* v. *Leslie* (1900), C. A. (*e*), the average duration of the service of the ships was about seventeen years, and the Company contended that duration of service, not duration of life, was the proper basis and that allowance on the original cost was the correct principle. The said period of seventeen years relates to service with the Company and is distinct from duration of life. The Company further contended that interest should not be taken into account. The Commissioners, however, arrived at twenty-eight years as being the duration of life of a passenger steamship, and allowed 6 per cent. depreciation on the diminishing value.

WRIGHT, J., held that a percentage on the original cost would not be consistent with Rule 6, as it "might have no direct relation to the actual diminishing of value in a particular year."

It was held that no point of law was involved, and that therefore the Commissioners' decision could not be reviewed.

Plant.—In *John Hall, Junior & Co.* v. *Rickman* (1906) (*f*), it was held that the Commissioners could not take into account past allowances in order to avoid granting depreciation after the full value had been allowed, but this point was subsequently dealt with by sec. 26 (2) of the Finance Act, 1907 (now Rule

(*e*) 82 L. T. 137 ; 4 Tax Cas. 177.

(*f*) 1 K. B. 311 ; 75 L. J. K. B. 178 ; 94 L. T. 224 ; 54 W. R. 380 ; 22 T. L. R. 131.

6 (6)), which imposes a restriction as to the continuation of depreciation. It was decided, however, that an old sailing ship used as a floating warehouse for coal was "plant" within the meaning of Rule 6.

The Practice.—Allowances in respect of ships have, however, been *primâ facie* fixed as follows by the Revenue ;—

Steamers 4 per cent. on prime cost.

Sailing ships 3 per cent. on prime cost.

Prime cost is the original cost price, plus subsequent capital expenditure, and the allowance is not to exceed the total prime cost less the breaking up value of 4 per cent. for steamers and 3 per cent. for sailing ships.

The following scale is applied for second-hand ships. One year of the expectation of life is taken as representing the breaking-up value so that, with *e.g.* a ship between 3 and 4 years old when purchased, the allowance is $\frac{1}{22}$ of cost for 21 years.

Age at date of purchase.		Expectation of life.	Proportion of cost allowed annually.
Over.	Under.		
Year.	Year.	Year.	
0	1	25	$\frac{1}{25}$
1	2	24	$\frac{1}{24}$
2	3	23	$\frac{1}{23}$
3	4	22	$\frac{1}{22}$
4	5	21	$\frac{1}{21}$
5	6	20	$\frac{1}{20}$
6	7	19	$\frac{1}{19}$
7	8	18	$\frac{1}{18}$
8	9	17	$\frac{1}{17}$
9	10	16	$\frac{1}{16}$
10	11	15	$\frac{1}{15}$
11	12	14	$\frac{1}{14}$
12	13	13	$\frac{1}{13}$
13	14	12	$\frac{1}{12}$
14	15	11	$\frac{1}{11}$
15	16	11	$\frac{1}{11}$
16	17	11	$\frac{1}{11}$
17	18	11	$\frac{1}{11}$
18	19	10	$\frac{1}{10}$
19	20	10	$\frac{1}{10}$
20	21	10	$\frac{1}{10}$

Depreciation of Securities.—No allowance is made for depreciation in market value of securities held by a trading Company, but appreciation is not credited for Income Tax purposes.

Claim for Allowance.—It is necessary in view of Rule 6 (4), which requires a "claim . . . to be included in the annual statement," that the form of return referred to should be filled in, even though Accounts are regularly supplied. This point is of considerable importance in connexion with the carrying forward of depreciation under Rule 6 (6) as an Inspector of Taxes has argued that omission to comply with Rule 6 (4) precluded the carrying forward of depreciation.

Loss.—On a loss occurring during the year of assessment and repayment being claimed under sec. 34 of the Income Tax Act, 1918 (see p. 373), the allowance for wear and tear increases the loss and therefore the amount of repayment.

Carrying Forward of Depreciation.—The following example shows the effect of Rule 6 (6) :—

Accounts are made up to 31st December, and the profits are as follows :—

	£		
Year to 31st December, 1918	= 3000		
,, ,, ,, 1919	= 1200	= £1440	= £3440
,, ,, ,, 1920	= 120		
,, ,, ,, 1921	= 9000		

The assessment for 1921–22 would be made on the average profits of the three years ended 31st December, 1920, and would = £1440. The 1922–23 assessment would be based on the average profits of the three years ended 31st December, 1921, and would equal £3440. The value of the machinery and plant account as written down for Income Tax purposes stood at £40,000 on 31st December, 1920, and depreciation was allowable at 5 per cent. = £2000 for 1921–22.

Thus the 1921–22 assessment would be as follows :—

	£
Assessable profits	1440
Less depreciation	2000
= Depreciation to be carried forward of . .	£560

1922—23 ASSESSMENT.

The assessable profit is £3440, less depreciation £560 carried forward and depreciation for the year of assessment.

The Machinery and Plant account is as follows :—

	£	£
31st December, 1920	40,000	
Less Depreciation allowable, 1921–22 .	2,000	
		38,000
Plus additions less sales in year to 31st December, 1921		6,000
Value at 31st December, 1921 . .		44,000

Depreciation at 5 per cent. = £2200.

The assessment would therefore be made on :—

	£	£
Profits		3440
Less depreciation carried forward . . .	560	
Less depreciation for year	2200	
		2760
		£680 = net assessment for 1922–23.

Had the assessment for 1922–23 been insufficient to cover the allowable depreciation the balance unallowed would be carried forward indefinitely until the profits would permit of the set-off.

Motor Cars for Professional Use.—In the case of doctors and other professional men using a motor car for professional purposes, claims for depreciation of cars are opposed by Inspectors of Taxes on the technical point of the assessments on professions being made under Case 2 of Schedule D on " professions, employments, or vocations " whereas Case 1 of Schedule D assesses any " trade " (defined by section 237 of the Income Tax Act, 1918, as including " any trade, manufacture, adventure, or concern in the nature of trade ") and Rule 6 to Cases 1 and 2 allows depreciation in connexion with any

"trade." It is contended by the Inspectors of Taxes that the said words being identical with those in Case 1, and excluding the said words in Case 2, Rule 6 does not apply to the latter Case.

Motor Cars were obviously not in the contemplation of the Legislature in 1878, but the elaboration of the depreciation provisions by the Finance Act, 1907, used the same words of limitation as the 1878 Act. However, in 1878 it was unnecessary to specifically include professions, as mechanical means of locomotion were non-existent and professions could not then have had anything of the nature of "machinery or plant." As the technical point is persisted in, it is not possible to obtain the allowance for depreciation, although from an equitable point of view, the allowance should clearly be made. Moreover, owing to the rapid depreciation of motor cars due to age, an allowance for repairs or renewals would not overcome the difficulty.

The following table of allowances has been agreed with the Revenue. The allowance is calculated on the "written down value" (p. 170), and, in addition, renewals of small parts which do not destroy the identity of the machine are allowed :—

Nature of industry.	Rate per cent.	Nature of plant.
Blast furnace plant and machinery . . .	6	Plant and machinery generally.
Bleaching and finishing, Dyeing and finishing . .	7½	Plant and machinery generally.
Book binding . . .	5	Engines, boilers and shafting.
	7½	General binding machinery.
Brickmaking . . .	5	Steam engines, boilers, shafting, and mixing and brick-making machines.
	7½	Electrical plant, *i.e.* dynamos, motors and transformers, etc., and crushing and grinding plant.
Chemical industry . .	15	Sulphuric acid plant.
	7½	Chemical plant other than sulphuric acid plant.
	7½	Electrical plant.
	5	Other plant.

Nature of industry.	Rate per cent.	Nature of plant.
Electric furnaces, and plant and machinery used in connection therewith	12½	All parts of the furnace, including transformers, switch-gear, high and low tension cable connections, furnaces, tilting gear and regulators, but not to foundations, buildings, cranes, buckets, or any shop tools or equipment.
Electric light undertakings	3	Cables.
	5	Plant and machinery.
Envelope making	5	Steam power plant and shafting.
	7½	Electrical power plant, including dynamos and electrical motors and process plant.
	20	Motor lorries and motor vans.
Flax spinning and linen weaving (Ireland)	7½	Machinery and plant (except accessory plant such as pirns, pirn cages, spools, belting, driving ropes, damask cards, designs, patterns, models, furniture and fixtures).
Flock manufacturing	6	Plant and machinery generally.
Flour milling	5	Engines, boilers and main shafting.
	7½	Other machinery.
Gas undertakings, other than those owned by municipal or other public authorities.	3	Gas holders.
	10	Meters, cookers and gas fires.
Handkerchief and manufacturing embroidery	5	Fixed plant (engines, boilers, shafting and gearing, and motors).
	10	Stitching machines.
Hemstitching	5	Fixed plant (engines, boilers, shafting and gearing, and motors).
	10	Hemstitching machinery.
Hosiery manufacturing	5	Engines, boilers and shafting.
	10	Process plant.
Hosiery needle making.	5	Steam and gas engines, boilers and shafting.
	7½	Electric motors.
	10	Manufacturing machinery.
Lace and Embroidery and Muslin manufacturing	7½	Plant and machinery.
Ladies' and Children's Clothing	5	Engines, boilers and shafting.
	7½	Electric motors.
	10	General process plant.
Linoleum and Floorcloth manufacturing	5	Engine, boilers and shafting.
	7½	Other plant and machinery.
	10	Diesel engines.
Motor omnibuses	20	Motor omnibuses.
Motor pantechnicons and lorries	20	Motor pantechnicons and lorries.
Nail making	5	All plant and machinery.

Nature of industry.	Rate per cent.	Nature of plant.
Needles and Fishing tackle .	5	Engines, boilers and shafting.
	6	Crochet, fishing-hook and rod-making machinery.
	7½	Electric motors and needle-making machinery.
Newspaper printing . .	5	Engines, boilers and shafting.
	7½	Printing and binding machines.
	10	Type (if not dealt with by way of renewals). [age tanks.
Paint, colour and varnish manufacture . .	5	Engines, boiler, shafting and stor-
	7½	General plant and machinery, including grinding machinery and electric motors.
	20	Motor lorries and motor tractors.
Paper bag making . .	5	Engines, boilers and shafting.
	7½	Electric motors and general plant.
	20	Motor vans.
Paper box making . .	7½	Plant and machinery.
	20	Motor vans.
Paper mills . . .	5	Machinery working day only
	7½	Machinery working day and night.
Printing	5	Engines, boilers, shafting.
	7½	Printing and binding machines.
	10	Type (if not dealt with by way of renewal).
Railway wagons . . .	5	Railway wagons owned by traders. [In the case of railway wagons the method adopted is to allow the actual cost of renewals year by year.]
Shipping (see p. 177)		
Shoe and slipper making .	5	Engines, boilers and shafting.
	10	Process plant.
	20	Motor vans and lorries.
Silk manufacturing . .	5	Steam engines, boilers and shafting.
	7½	General plant (including winding, throwing, doubling and weaving machinery) and on electric motors. [machines.
	10	Sewing, braiding and knitting
Steam laundry and dyeing and cleaning . . .	7½	Plant and machinery generally.
	20	Motor vans.
Steel manufacturers . .	5	Machinery and plant used in manufacture of steel.
Timber merchants, saw millers and manufacturers of timber goods . . .	5	Engines, boilers and main shafting.
	7½	General saw milling plant and machinery.
	20	Traction engines, tractors, motor cars and haulage plant.
Tramways (see p. 183)		
Wrought iron industry	7½	Plant and machinery generally.

Relief.—In ascertaining total income for the purposes of "relief" based upon "total income from all sources," and also in arriving at Super Tax liability, the *net* Schedule D assessment after allowance for depreciation is the aggregable amount. (See p. 352.)

In practice depreciation may be dealt with by the following methods :—

MUNICIPAL CORPORATIONS AND COMPANIES WORKING TRAMWAYS AND LIGHT RAILWAYS, GAS, WATER AND ELECTRICITY UNDERTAKINGS.

Scheme for determining the allowances to be granted for Wear and Tear in respect of the above undertakings.

Tramways.

Permanent Way.—Allowance for maintenance to cover depreciation.

Life.

1. The life of the permanent way is to be taken as twelve, fourteen, or sixteen years, according to the traffic thereon. The classification is to be based on the average car mileage per mile of track per annum of the financial year preceding the year of assessment, viz. :—

1. Not exceeding 50,000 car miles per mile of track—sixteen years.
2. Over 50,000 and not exceeding 75,000 car miles per mile of track—fourteen years.
3. Over 75,000 and not exceeding 125,000 car miles per mile of track—twelve years.
4. Over 125,000 car miles per mile of track—special consideration.

2. Where there are special circumstances, such as exceptional gradients, and the compulsory use of wood paving, etc., tending to show that the car mileage does not fairly represent the wear and tear of the track, each such case is entitled to special consideration.

Cost of Renewals.

3. The cost of renewals, including setts or other paving, but excluding concrete foundations, should be taken at £4400 per mile of single track until the general renewal of the track takes place.

The cost of renewals in the case of a tramway situated abroad cannot be taken as necessarily amounting to £4400 per mile. It will be necessary to ascertain the nature of the track and its original cost, and the probable cost of renewal, having regard to the fact that much of the preliminary expenditure incurred when the line was first constructed will not recur.

Basis of Computation of Depreciation Allowance.

4. No allowance should be made in computing the assessable profits in respect of any expenditure on repairs or maintenance of the permanent way, but the allowance for depreciation should be computed at such a sum per annum as will, in the aggregate, over the determined life of the permanent way, be equal to the cost of renewal as above fixed, plus the estimated repairs for that period :—

Cost of renewal per mile (as above) . . .	£4400
Add *for example* :—	
Estimated cost of repairs at £100 per mile per annum, for an undertaking with a life of sixteen years .	£1600
	£6000
Amount to be allowed per annum in lieu of depreciation, $\frac{1}{16}$	£375

5. The amount to be added in respect of ordinary repairs should be determined by taking the actual average expenditure as shown in the accounts of the undertaking for the last three years, *i.e.* the three years preceding the initiation of the scheme, or such period less than three years as the undertaking has been in existence. If at the beginning of any year of assessment for which the allowance is being computed the mileage

of the track differs from the average mileage during the three years above mentioned, the allowance under this head should be increased or diminished proportionately.

6. Repairs under this head should be understood to include renewals of special track work at junctions and cross-overs, which occur at frequent intervals.

Periodical Adjustment.

7. Inasmuch as the expenditure on repairs is expected to increase as the track begins to wear, in which case the figure to be adopted under this head, which is to be based on past experience, will be unsatisfactory, the amount of such estimate should come up for revision at the end of every five years, and an adjustment should be made by increasing or diminishing the allowance as the circumstances require, having regard to the basis of calculation outlined above.

The whole amount to be allowed for repairs in each year of the quinquennium can be varied only with variations in the mileage of the track, *i.e.* the amount to be allowed *per mile of track* is a constant quantity.

8. A strict account should be kept by the Corporation and the Inspector, of the annual allowances, and of the actual expenditure on repairs and renewals; and at the end of ten or fifteen years (*i.e.* the second or third revision) or at such time as the general renewal of the track shall have taken place, the amount to be annually allowed should be reconsidered and increased or diminished for succeeding years as the ascertained facts shall show to be necessary, provided that under no circumstances shall the allowances for previous years be re-opened.

9. All expenditure on extensions and improvements should be excluded from the working expenses for income-tax purposes; and the necessary additional allowance for depreciation on the lines suggested above (*i.e.* mileage) should be at once allowed on such expenditure, and added to the sum already allowable.

10. The allowance of £4400 for renewal of permanent way mentioned above is intended to apply to the overhead trolley system. Special arrangements should be made, on the lines of the foregoing in the case of the conduit, surface contact, or other system. The number of such cases is very small. As the circumstances vary very considerably in each case, the amount to be allowed for renewals should in the first instance be arrived at by arrangement with the Chief Inspector of Taxes.

Cables.

11. In addition to repairs, depreciation should be allowed at the rate of 3 per cent. per annum on the written-down value.

Overhead Equipment, i.e. *Trolley Wires and Connexions.*

12. No depreciation should be allowed, but all expenditure on maintenance and renewals should be charged as working expenses, and as when incurred.

Cars and other Rolling Stock.

13. Subject to the ensuing clause, expenditure on maintenance and renewals should be treated as working expenses, and allowed in lieu of depreciation.

14. Depreciation, however, should be allowed in lieu of renewals where the circumstances justify such an allowance, provided that a strict account is kept of all renewals, and that, if such renewals are charged to Revenue Account, they shall be shown separately in such account and added back in computing the assessable profits.

15. The allowance in such case should be 7 per cent. per annum on the written-down value.

16. In any case, the annual expenditure on repairs is to be allowed as a deduction in computing the assessable profits.

General Plant and Machinery.

17. All other plant and machinery, including standards, brackets, and workshop tools, but excluding loose implements,

office furniture, and small articles which require frequent renewal, should be bulked together and depreciation allowed thereon at the rate of 5 per cent. per annum on the written-down value, in addition to the cost of repairs.

The following computation of the allowance to be made for 1912–13 in the case of an undertaking having nine miles of the track in the three years preceding the quinquennium, but eleven miles at the beginning of the year of assessment, shows the working of the scheme. The life of the track is twelve years :—

Cost of renewal of eleven miles of track at £4400 per mile	£48,400
Add, for expenditure on repairs (the average actual expenditure for 1906, 1907 and 1908 on nine miles was £1480=£164 per mile per annum =£1804 per annum for eleven miles) £1804 per annum for life of track, viz. twelve years . .	£21,648
Total cost of maintenance of eleven miles for the twelve years' life of track	£70,048
Allowance per annum	£5,834

Gas and Water Undertakings.

18. No depreciation should be allowed in any circumstances in respect of any portion of these undertakings.

19. All expenditure on repairs and renewals, but excluding extensions and improvements, is to be charged and allowed as working expenses, as and when incurred.

20. Provided that whenever any exceptional expenditure on *bonâ fide* renewals is incurred, and full effect cannot be given to its deduction in that year owing to the profits or gains chargeable with income-tax in that year being less than the amount so expended, the balance of the said expenditure which has not been allowed may be carried forward and allowed in the following year or years, as is provided in the case of unallowed wear and tear by sec. 26 (3) of the Finance Act, 1907.

Electric Lighting Undertakings.

Cables.

21. In addition to repairs, allowance for depreciation may be granted at the rate of 3 per cent. per annum on the written-down value.

Plant and Machinery.

22. On all other plant, exclusive of loose tools, meters, and office furniture, depreciation may be allowed at the rate of 5 per cent. per annum on the written-down value, in addition to the cost of repairs.

Conduits.

23. No allowance should be made for depreciation; but annual expenditure on repairs and renewals may be allowed as working expenses, as and when incurred.

Meters, Loose Tools, and Office Furniture.

24. No allowance should be made for depreciation; but annual expenditure on repairs and renewals may be allowed as working expenses, as and when incurred.

General.

25. In all cases where depreciation allowances are granted, a strict account should be kept of the annual expenditure on renewals (and repairs in the case of tramway tracks), including replacements due to obsolescence, and of the amounts allowed for depreciation and obsolescence, whether under this arrangement or under any arrangement made prior hereto, and a readjustment should be made for the future, if necessary, at the end of every five years, as detailed under "Tramways (Permanent Way)," subject, however, to the special provisions applicable to permanent way.

26. Where depreciation allowances other than those for the permanent way of tramways are granted, renewals should be carefully distinguished, and, if charged against revenue,

they should be notified to the Inspector in order that they may be added back in arriving at the income-tax liability.

27. "Written-down value" means original prime cost, plus subsequent additions, less all allowances actually granted by the Revenue in respect of wear and tear.

28. These proposals are to take effect for the year 1908–9, onwards.

In the case of undertakings abroad this should read "1910–11."

29. The computations necessary for any future adjustment should be duly made, agreed and recorded each year, whether the accounts for the particular year under review show any assessable income-tax liability or not.

30. Where, in any cases, allowances for depreciation have been made which are now to be discontinued, and they have not been exhausted by renewals already effected, the amount of such unexhausted allowances should be determined by agreement between the Inspector and the Corporation or Company, and deducted from the expenditure on future renewals as and when they are effected.

31. All cases of dispute should be referred to the Board through the Chief Inspector of Taxes.

Gas Undertakings other than those owned by Public Bodies.

This scheme has been approved by the Board of Inland Revenue, and has received the assent of a committee representing a large proportion of the Companies and other persons concerned, and the Institution of Gas Engineers; and although it does not remove the matter in question from the jurisdiction of the District Commissioners, it is not anticipated that they will raise any difficulties when a satisfactory settlement is arrived at.

The scheme must be adopted in its entirety, if at all, and Gas Companies will not be entitled to the benefit of one portion while rejecting the remainder of the scheme.

If in any case the scheme applicable to Municipal Gas Undertakings has been adopted, no change is made except at the special request of the Company, and if any other arrangement is in force, which the Company do not wish to have disturbed, the case has to be submitted with full details to the Chief Inspector before any alteration is made.

The scheme is to be applied to 1912–13, onwards, but before any allowances are granted on this basis the Gas Company has to sign a copy of the scheme.

Scheme—Form of Agreement.

Plant, Machinery, and Mains.

1. No depreciation shall be allowed in respect of the plant, machinery, and mains, other than as specified hereinafter, but in lieu thereof all expenditure on repairs and renewals is to be charged in the Company's accounts for Income Tax purposes and allowed as working expenses, as and when incurred. All expenditure on extensions and improvements, where debited against Revenue, to be distinguished and excluded from the said allowances.

2. Provided that whenever any expenditure on such renewals is incurred, and full effect cannot be given to its deduction in the year when incurred, owing to the profits or gains chargeable with Income Tax in such year being less than the amount so expended, the balance of the said expenditure, which has not been allowed, may be carried forward and allowed in the following year or years as is provided in the case of unallowed wear and tear by Rule 6 (6) to Cases 1 and 2.

Gasholders.

3. In addition to repairs, depreciation shall be allowed at the rate of 3 per cent. per annum on the written-down value. Such value not to include tanks, except where constructed of steel or iron, and in no case is the cost of excavation to be included in the value upon which the depreciation allowance is computed.

Meters (Ordinary and Prepayment), Cookers and Gas Fires.

4. In addition to repairs, allowance for depreciation shall be granted at the rate of 10 per cent. per annum on the written-down value.

Services and Fittings.

5. No depreciation shall be allowed in respect of Services and Fittings, but in lieu thereof all expenditure shall be allowed as a trading expense as and when incurred.

"Services" are to be understood as representing the pipes which connect the street mains with the properties served.

"Fittings" are the pipes, pendants, and brackets within such properties, supplied by and at the cost of the Company.

Where fittings so supplied are removed by the Company at any time they shall be brought back into stock, if of any value, and re-issued without any charge against Revenue except for the cost of repairs necessary to enable them to be re-issued. In the event of their not being re-issued, Revenue shall be credited with the scrap value.

General.

6. In all cases where depreciation allowances are granted, renewals, if charged against Revenue, shall be carefully distinguished and notified to the Inspector in order that they may be added back to profits for the purpose of arriving at the Income Tax liability.

7. If new works are erected, wholly or partially, on a new site, in place of old works abandoned or demolished, a reasonable allowance shall be granted for renewals in respect of the displaced plant, so far as it is actually renewed, such allowance to have regard to the original cost of the displaced plant, less any depreciation that may have been granted, but such allowance shall not include the cost of preparing the new site or erecting foundations for the new plant.

8. All renewals of parts which do not destroy the identity of the original article shall be allowed as repairs, except so

far as they constitute an extension, enlargement, or other similar improvement in value.

9. Where renewals are allowable under this scheme in lieu of depreciation, they shall be allowed notwithstanding that the cost thereof may not have been debited in the Company's accounts against Revenue.

10. "Written-down value" means original prime cost, plus subsequent additions (including renewals which have not been allowed for Income Tax purposes) less all allowances actually granted for Income Tax purposes in past years, in respect of depreciation.

11. "Expenditure" includes the sum expended on materials, labour, and incidentals.

12. This scheme shall take effect for the year 1912–13, and future years.

13. Where, in any case, allowances for depreciation have been made which are now to be discontinued, and they have not been exhausted by renewals already effected, the amount of such unexhausted allowances shall be deducted from the expenditure on future renewals as and when they are effected.

We desire to adopt the above arrangements and hereby undertake to fulfil the conditions thereof.

On behalf of .

Dated the day of 192 .

Chairman.

Secretary.

DISCOUNTS.

Discounts are assessable under Rule 1 (*b*) of Case 3 of Schedule D. (See p. 64.)

DIVIDENDS.

Dividends, etc., are assessable, under Case 3 of Schedule D, on the recipients in the following cases :—

(1) Interest, annuities, dividends, and shares of annuities payable out of any *public revenue* and not chargeable under Schedule C, where the half-yearly payment shall not exceed 50*s*.

(2) Dividends on any amount of Government Stock purchased through the Post Office. (See p. 64.)

(3) Interest not exceeding £5 per annum paid or credited by the Post Office.

In the case of dividends on shares, etc., not within the above exceptions, the recipient receives the dividend less a deduction for tax, and the dividend warrant stipulates that tax has been paid by the Company. Thus a dividend of £20 for 1922–23 would be paid to the recipient as £20 less tax at 5*s.* in the £=£15, the amount received.

"Free of Tax" Dividends.—In some cases dividends are paid "free of tax," *i.e.* Income Tax has been allowed for before arriving at the dividend to be declared, and the dividend paid is in reality a payment of that dividend plus Income Tax. Thus £15 paid "free of tax" would, with the 5*s.* rate, be equivalent to £20 subject to deduction, and there is therefore, as regards Income Tax, merely a "paper" distinction between the two methods, but it must be observed that in claims for repayment on account of relief, etc. (see p. 341), repayment may also be claimed in respect of "free of tax" dividends, as the recipient's share of the profits of the concern of which he is a shareholder has borne tax by the assessment on the concern, exactly as if the dividends had been paid in the ordinary manner.

A dividend of £20 less tax equals a net dividend of £15 and the tax of £5 would be repayable to an exempt person. A dividend of £20 "free of tax" is a net dividend, therefore the tax repayable would be the difference between such dividend as would, when subjected to tax, be reduced to £20, *i.e.* £26 13*s.* 4*d.* less tax at 5*s.* in the £, which would give £20, and the tax of £6 13*s.* 4*d.* would be repayable.

The full dividend, before deducting tax, is adopted in arriving at total income for purposes of relief, etc., and for repayment to the taxpayer (p. 351), and with the rate at 5*s.* the "free of tax" dividend should be increased by one-third of its amount thus :

£1 dividend "subject to tax" = £1 — tax = "free of tax" dividend, therefore the following formula may be used in converting "free of tax" dividends b to "subject to tax" dividends a :—

$$a = \frac{b}{£1 - \text{rate in the £}}$$

Dividends as Remuneration.—See *Eyres* v. *Finniston Engineering Co.* (1916) (*g*).

Debenture Interest.—The Revenue refuse repayment in respect of debenture interest, paid "free of tax."

(See REPAYMENT, p. 411.)

DOCKS.

Docks are assessable under No. III. of Schedule A on the profits of the year preceding and are to be charged in the parish where they are situate.

DOMESTIC EXPENSES.

A deduction is prohibited by Rule 3 to Cases 1 and 2 of Schedule D (p. 83), in respect of "any disbursements or expenses of maintenance of the parties, their families or establishments or any sums expended for any other domestic or private purposes distinct from the purposes of such trade, profession, employment or vocation."

DOUBTFUL DEBTS.

(See BAD DEBTS, p. 102.)

DRAINS.

Drains are assessable under No. III. of Schedule A on the profits of the preceding year.

In *Ystradyfodwg and Pontypridd Main Sewerage Board* v. *Bensted*, [1907] (*gg*), it was contended by the appellant that a sewer which ran partly above and partly below ground was chargeable, if at all, under No. III. of Schedule A on the profits, which were *nil*, instead of under General Rule I. of Schedule A

(*g*) 7 Tax Cas. 74.

(*gg*) A. C. 264; 71 J. P. 425; 76 L. J. K. B. 876; 97 L. T. 141; 23 T. L. R. 621; 5 L. G. R. 865; 5 Tax Cas. 230.

on the annual value as assessed by the Revenue, which value in this case was based on the Poor Rate value. Sewers are not specifically mentioned in No. III. of Schedule A, but it was sought to bring them within the word "drain" therein. It was held that the sewer fell to be assessed under General Rule I. of Schedule A, and EARL HALSBURY said:

> "The word 'drain' used by itself might perhaps bear the meaning that it is suggested by the Appellants it ought to bear, but when you look at the mode in which the word 'drain' is introduced and the other words with which it is associated, you see that its meaning depends upon a very familiar canon of construction, that where you have a word which may have a general meaning wider than that which was intended by the Legislature, when you find it associated with other words which show the category within which it is to come, it is cut down and over-ridden according to the general proposition, which is familiarly described as the *ejusdem generis* principle. Accordingly, the word 'drain' used in that sense is not included in the excepted businesses which are described in the section so as to make the word 'drain' applicable to the present question."

Sec. 34 of the Finance Act, 1921, now provides that tax shall not be charged in respect of a sewer vested in a local authority. This does not extend to a rent payable or other annual payment to be made by the authority. The following definitions are given by sec. 34:

> *Sewer* means a sewer maintained by a local authority in pursuance of their statutory duties in relation to the public health.
>
> *Local Authority* means a public body having power under any enactment relating to the public health to construct and maintain sewers.

DRAWINGS OF PARTNERS.

No allowance is admissible for partner's drawings, which are assessed as part of the profits. (See p. 351.)

ELECTRIC LIGHT WORKS.

Electric Light Works are assessable under Schedule D, not under No. III. of Schedule A. Although they may be considered

as similar in their use of land to gasworks, and as falling within the sweeping words " other concerns of the like nature " (p. 57), they were obviously not in the contemplation of the Legislature in 1842, when No. III. of Schedule A passed into law, but this point is not of material moment when general sweeping words were introduced, as it may be urged that the Schedule D provisions became law also in 1842, and that its charging provisions are not specific but general, and similarly had not Electric Light Works in contemplation.

Schedule A assessments are not made on the " annual value " of mains, pipes, wires, or way leaves (but see WATERWORKS, p. 312).

(See also MINES, p. 276.)

EMBEZZLEMENT.

Loss from embezzlement is deductible.

EMPLOYEES' CONTINGENT INTEREST.

In *Walker* v. *Reith*, [1906] (*h*), the proprietor of a business, in order to secure continuity of the business after his death, provided by a deed of arrangement for the following :—

The net profits of the business to be annually divided among certain selected employees in certain shares. Ten per cent. only of the profits to be paid over to the said employees, and the remainder not to be drawn until the whole of the late owners' capital had been paid out, but in the meantime the employees' shares were credited to them. The employees' interests in the business did not vest until the capital had been paid out, and there was no power in the employees to sell or dispose of such interests.

It was held that the 90 per cent. was not assessable on the employees who were not partners, and the case was distinguished from the example of a portion of a salary being held up or deferred under a contract of service, as the deferred portion was salary. " There is all the difference between a case of that kind, and one where the fund said to form part

(*h*) 8 F. 381 ; 43 Sc. L. R. 245.

of a man's income may, from causes over which he has no control, never be his at all." (See p. 368.)

EXCESS PROFITS DUTY.

Excess Profits Duty forms a deductible expense for Income Tax purposes, Rule 4 to Cases 1 and 2 of Schedule D, providing that the duty shall be deducted "in computing the profits or gains of the year which included the end of the accounting period in respect of which the excess profits duty has been paid." With the duty chargeable under the said Act the accounting period is the trading year, so that if the year ends on, say, 31st December, 1920, the duty would be deductible from the 1920 profits and fall into average for 1921–22, 1922–23, and 1923–24.

Where repayment of Excess Profits Duty has been made the amount repaid is to be treated as profit for the year in which repayment is received.

If the Income Tax assessment is made before the duty is ascertained the duty is reduced by the amount by which the Income Tax would have been reduced, and "if there is no excess profits duty" repayment is made.

EXECUTORS.

See *Cohan* v. *I. R.* (1923) and p. 330.

EXCHANGE (LOSSES ON).

These losses are allowed, but see *Bennet* v. *Underground Electric Railways* (1923), *re* non-allowance for management expenses claim.

EXHAUSTION OF ASSETS.

(See CAPITAL EXPENDITURE, p. 134.)

EXPERIMENTS.

A deduction is not allowed for a levy on colliery proprietors for experimenting, at the request of the Government, in coal-dust with a view to preventing explosions in mines. *Lochgelly Iron and Coal Co., Ltd.* v. *Crawford*, [1913] (*i*) (see MINES, p. 276).

FAIRS.

Rights of fairs are assessable under No. III. of Schedule A on the profits of the preceding year.

(*i*) S. C. 810; 50 Sc. L. R. 597; 6 Tax Cas. 267.

FARMERS.

Farmers may, instead of being assessed under Schedule B (see p. 39), elect to be assessed under Schedule D on the profits of the three preceding years, by giving notice in writing to the Inspector of Taxes within two calendar months after 6th April in each year, or be charged on the profits of the year of assessment (p. 40).

FERRIES.

Ferries are assessable under No. III. of Schedule A on the profits of the preceding year.

FINANCIAL COMPANIES.

The assessment of Financial Companies—which raise money which they lend at higher rates of interest than they pay—has been extensively connected with the question of the assessability of such companies on Colonial and Foreign Securities and Possessions under Cases 4 and 5 (p. 205), only on the amounts remitted to this country, or under Case 1 (p. 48) on the full profits. The Finance Act, 1914, sec. 5 (now Rules 1 to Cases 4 and 5 of Schedule D in the 1918 Act), removed the limitation of assessability of certain Foreign and Colonial Securities and Possessions, thus leaving the full amounts to be assessed irrespective of whether they have been remitted to this country or not. The Rules relate to securities, stocks, shares, or rents, and are set out in full at pp. 205–207.

Case 4 covers (see p. 205) "income arising from securities" abroad other than those chargeable under Schedule C (see p. 369) and the basis of assessment is the amount for the *current year*.

Case 5 (see p. 207) assesses "possessions" abroad (which includes dividends on shares) and the basis of assessment is the average of the *three preceding years*.

Interest.—It should be noted that interest is a distinct subject-matter of assessment (see p. 266), and, in the case of an Insurance Company, the Revenue has the right to make the assessment on the interest received instead of on profits, a

discretion which is against the taxpayer on the profits being less than the interest (p. 261).

Management Expenses.—Section 33 of the Income Tax Act, 1918, allows deduction of management expenses in certain cases when the assessment is on income from investments, not on profits. See pp. 249–250.

See *Bennet* v. *Underground Electric Railways* (1923), where loss on exchange not allowed.

Debentures.—A deduction is allowed to Mortgage and Investment Companies of the cost of renewing existing debentures, but not in respect of the cost of raising fresh capital by means of debentures.

Mortgage Companies.—In *Scottish Mortgage Company of New Mexico* v. *McKelvie* (1886) (*k*) the Company was formed principally for the purpose of borrowing money in this country on debentures at a low rate of interest and lending it in the United States, together with the paid-up capital, at a high rate of interest.

One contention in the case as to the assessment being restricted under Case 4 of Schedule D to *remittances to this country* is now irrelevant (*ante*).

The assessment was made under Case 4, and sustained in the Courts, on £5174, arrived at as follows, no deduction being made for debenture interest paid or due :—

	£	*s.*	*d.*	£	*s.*	*d.*
Interest of money lent by the Company on the security of property in the United States of America, earned or accrued and brought into account in the year ended 31st December, 1884				6926	5	2
Transfer fees received				2	12	6
				6928	17	8
Expenses of management in America	1193	5	10			
Expenses of management at home	562	0	7			
				1755	6	5
Amount assessed				£5173	11	3

(*k*) 24 Sc. L. R. 87 ; 14 R. 98 ; 2 Tax Cas. 165.

The income was applied as follows :—

	£	s.	d.
Interest on debentures paid and accrued to 31st December, 1884	3094	18	1
Dividend of 7 per cent. to the shareholders.	700	0	0
Extinction of the debit balance of the year 1883	499	10	7
Reduction of preliminary expenses . .	508	5	5
Carried forward	370	17	2
	£5173	11	3

The Company contended, *inter alia*, that the assessment should be made under Case 1 on the balance of the profits or gains amounting to £239.

The LORD PRESIDENT ruled that the concern was undoubtedly a trading company, and said that the duty might have been charged in this case as under the first Case of Schedule D ; but that was not the question. When the duty is chargeable under alternative Cases it is open to the Revenue to adopt the Case most favourable to themselves. His Lordship agreed with the allowance of expenses of management in America, " because that cannot have been received in this country as part of the income derived from the foreign securities." Case 4, under which the amount in question was assessed, dealt solely with amounts remitted to this country, and therefore the expenses in question would obviously not be received here, but as the Finance Act, 1914, sec. 5 (*ante*) withdrew the restriction as to remittance, leaving the *income* assessable, the contention that the expenses were not received in this country cannot now be advanced as the sole determining factor, and therefore it is open to argument that the expenses cease to be admissible, but see p. 208. His Lordship, in referring to the home management expenses, said, " But there are also deducted the expenses of management at home. Upon what principle that deduction is made I do not know, but as the Inland Revenue have chosen to make it, of course the other party will have the benefit of it." This dictum shows that his Lordship's allowance of the

foreign expenses had reference solely to the question of remittance, but see p. 249 for statutory allowance of management expenses.

LORD SHAND said that Case 4 expressly provides for the assessment of money sent abroad for investment in foreign securities.

Interest on Colonial Advances.—In *Smiles* v. *Australasian Mortgage and Agency Co., Ltd.* (1888), (*l*) the company had a wool-broking business and made temporary advances on the security of second mortgages, or on wool and produce. The advances, with trifling exceptions, were not of fixed amount but fluctuated from time to time as the produce was realized.

It was held that the interest on the advances was chargeable under the 1st Case of Schedule D.

The LORD PRESIDENT was of the opinion that the trade the company was engaged in was partly that of a broker and partly that of a banker, and he distinguished the cases of *Scottish Mortgage Co. of New Mexico* v. *McKelvie* (*m*) and *Smiles* v. *Northern Investment Company of New Zealand, Limited* (*n*), pointing out that the business in this case was of a very different description, and that the account between the Company and its customers was of the nature of a current account as between banker and customer.

> "The advances are made according to the amount of security held for the time. That may also be described as the nature of a commission agent's account; but it is the one or the other; and it seems to me to be not at all in the nature of investments of money, but on the contrary, advances of the most irregular and fluctuating description, just such advances as a commission agent makes upon the security of the goods in his hands in this country, or that a banker makes according to the state of the securities which he holds for the time . . . . I think this is proper trading and nothing else, and not investment of money upon securities."

His Lordship stated that a contrary decision would be most unjust, as if the Company were charged under Case 4 for

(*l*) 25 Sc. L. R. 645; 15 R. 872; 2 Tax Cas. 367.
(*m*) (1886), 24 Sc. L. R. 87; 14 R. 98; 2 Tax Cas. 165.
(*n*) (1887), 24 Sc. L. R. 530; 2 Tax Cas. 177.

"Interest" on advances upon fluctuating securities and made losses on the other part of their business they would be unable to set off the losses against the profits from the advances.

Sales of Securities. — In *Scottish Investment Trust Company* v. *Forbes* (1893) (*o*) the Company, in accordance with its memorandum of association, was able to vary its investments and its assets generally.

It was held that the profits made by realizing investments were chargeable to Income Tax, but that depreciation in book-value of other investments could not be set against the said profits.

The Company contended that the profits on sales had been charged to capital account and were therefore not assessable; that in the year in which the tax was charged the capital account had greater losses than profits; and that the business of the Company was to invest the capital of the Company in different bonds and stocks with the object of averaging risks, and to divide the dividends and interest received. The income of the Company is derived from the dividends and interests of the Company's investments. The Company further urged that the directors of a limited Company were entitled to treat increment of value on part of their capital as a set-off against depreciation in value of other capital assets, so as to keep the capital value of their whole assets up to its proper standard, by retaining such profits in the capital account and not carrying them to revenue account.

The Inspector of Taxes contended that the Company made a practice of realizing securities, and he referred to a dictum in *Northern Assurance Company* v. *Russell* (*p*) (see p. 254) that "where the gain is made by the Company (within the year of assessment, or the three years prescribed by the Income Tax Acts, Schedule D) by realizing an investment at a larger price than was paid for it, the difference is to be reckoned among the profits and gains of the Company."

(*o*) 31 Sc. L. R. 219; 21 R. 262; 3 Tax Cas. 231.
(*p*) (1889) 26 Sc. L. R. 330; 16 R. 473; 2 Tax Cas. 571.

The LORD PRESIDENT said that, from the Memorandum of the Company, the varying of investments was an essential feature of the business, being one of the appointed means of acquiring profits. In his view the position of the Company was entirely distinguishable from that of a private individual or an ordinary trader, and he therefore rejected the contention that increases on realization of stocks formed capital.

His Lordship, in referring to setting off losses, said that in the Company's report the sums in question were described as net profits on sales of securities during the year. He approved of the cited *dicta* in *Northern Assurance Company* v. *Russell.*

FIRE.

Loss of stock through fire is deductible in so far as it is not recovered by insurance, but loss of the buildings does not form an admissible deduction.

FIRE INSURANCE PREMIUMS.

A deduction is permitted, in practice, for Fire Insurance premiums. See *Union Cold Storage* v. *Jones* (1923), *re* foreign plant, etc., let.

FISHINGS.

Fishings are assessable under No. III. of Schedule A on the profits of the preceding year.

FOREIGN.

The question of "foreign" assessment (which term includes "colonial") may be divided into two classes :—

(*a*) Foreign Profits of British Residents.

(*b*) British Profits of Foreign Residents.

It is provided by No. 1 of Schedule D (see p. 48), that Income Tax is chargeable as follows :—

(1) On profits from any kind of property situate abroad and belonging to a resident in the United Kingdom.

(2) On profits arising or accruing to any person residing in the United Kingdom, from any trade, profession, employment, or vocation carried on abroad.

(3) On profits of any person, resident abroad, from any property whatever in the United Kingdom, or from any trade, profession, employment, or vocation exercised within the United Kingdom.

Temporary Residence.—In order to deal with the taxation of temporary residents in and from the United Kingdom, Rule 3 of the General Rules of all Schedules provides as follows :—

> Every British subject whose ordinary residence has been in the United Kingdom shall be assessed and charged to tax, notwithstanding that at the time the assessment or charge is made he may have left the United Kingdom, if he has so left the United Kingdom, for the purpose only of **occasional residence** abroad, and shall be charged as a person actually residing in the United Kingdom upon the whole amount of his profits or gains, whether they arise from property in the United Kingdom or elsewhere, or from any allowance, annuity, or stipend (save as herein is excepted), or from any trade, profession, employment, or vocation in the United Kingdom or elsewhere :

Rule 2 of the Miscellaneous Rules of Schedule D provides that :—

> A person shall not be charged to tax under this Schedule as a person residing in the United Kingdom in respect of profits, or gains received in respect of *possessions* or *securities* out of the United Kingdom who is in the United Kingdom for some *temporary purpose only* and not with any view or intent of establishing his residence therein, and who has not actually resided in the United Kingdom at one time or several times for a period **equal in the whole to six months in any year** of assessment, but if any such person resides in the United Kingdom for the aforesaid period he shall be so chargeable for that year.

Rule 3 covers profits generally but Rule 2 relates to Foreign and Colonial "Securities" and "Possessions," see Cases 4 and 5 of Schedule D, p. 205.

Rule 2 (previously sec. 39 of the 1842 Act) was dealt with by LORD MCLAREN in *Cooper* v. *Cadwalader* (p. 235), and it was pointed out that, in order to obtain the exemption, it must be proved that the claimant is—

(*a*) here for a temporary purpose only, *and*

(*b*) that he is not here with a view or intent of establishing a residence.

His Lordship stated that "if the argument is lame on one of the legs" the exemption does not apply, as the claimant must "affirm both members of the double proposition."

Foreign Profits of British Residents.

The assessment of foreign profits of British residents was materially affected by sec. 5 of the Finance Act, 1914 (now Rules 1 of Cases 4 and 5 of Schedule D), and many of the cases on the point are now of considerably diminished significance, as the prevailing contentions that the foreign profits were assessable under Cases 4 or 5 of Schedule D on the amounts *remitted to this Country*, instead of under Case 1 on the full amounts, were affected by the withdrawal of the restriction as to remittance.

Sec. 5 was introduced to avoid foreign and colonial income escaping taxation by being reinvested abroad, as Cases 4 and 5 only tax *remittances*. This section does not repeal these Cases but removes the question of remittance in respect of *securities, stocks, shares, or rents*, specifically *omitting businesses*. It provided, however, that income which has been capitalized in the past should not be taxed on subsequent remittance to the United Kingdom, as was formerly the case under the Cases 4 and 5, and this point was secured in respect of present and future income. See p. 251 as to the exclusion of income from investment of the foreign life insurance fund of a life insurance company.

Case 4 enacts that—

(1) The tax in respect of income arising from securities in any place out of the United Kingdom shall be computed on the full amount thereof arising in the year of assessment, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not received in the United Kingdom, to the same deductions and allowances as if it had been so received, as to the deduction, where such a deduction cannot be made under any other provision of this Act, of any

sum which has been paid in respect of Income Tax in the place where the income has arisen, and to a deduction on account of any annual interest or any annuity or other annual payment payable out of the income to a person not resident in the United Kingdom, and the provisions of this Act (including those relating to the delivery of statements) shall apply accordingly.

(2) The foregoing rule shall not apply :—

(*a*) to any person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom ; or

(*b*) to income arising from such securities as aforesaid which form part of the investments of the foreign life assurance fund of an assurance company.

The tax in any such case shall be computed on the full amount, so far as the same can be computed, of the sums which have been, or will be, received in the United Kingdom, in the year of assessment without any deduction or abatement.

A taxpayer may, by Rule 3, require a case to be stated for the High Court (p. 338) on the question of domicile or residence.

(See Schedule C, p. 369, for assessment of interest, annuities, dividends, and shares of annuities payable out of foreign or colonial *public* revenue.)

Trusts.—It is provided, for foreign and colonial *public* securities chargeable under Schedule C (p. 369) by Rule 2 (*d*) of Schedule C that Income Tax shall not be payable in respect of interest or dividends of any *securities of a foreign State or a British possession* which are payable in the United Kingdom where it is proved to the satisfaction of the Board of Inland Revenue that the person owning the securities and entitled to the interest or dividends, is not resident in the United Kingdom. Where the said securities are held under a trust, the beneficiary in possession is deemed to be the owner if he is the sole beneficiary in possession, and can, either by revocation of the trust or exercise of powers under the trust, call upon the trustees at any time to transfer the securities to him absolutely free from any trust.

Repayment may be claimed within three years of the end of the year of assessment.

In *Williams* v. *Singer* (1920), H. L. (*q*) trustees were resident in the United Kingdom but the beneficiary was *not* resident in the United Kingdom. Income was received from foreign investments, and this income was paid to the account of the beneficiary in New York and was not received in the United Kingdom. An assessment was made on the trustees for this income under Cases 4 or 5 of Schedule D. The House of Lords held that there was no liability. LORD CAVE stated that "the fact was that if the Income Tax Acts were examined it would be found that the person charged with the tax was neither the trustee nor the beneficiary as such, but the person in actual receipt and control of the income which it was sought to reach." His Lordship also said that "while a trustee might in certain cases be charged with the tax, he was in *all* such cases to be treated or charged on behalf of or in respect of his beneficiaries, who would be entitled to any exemption or abatement which the Acts allowed," *i.e.* the exemption for non-remitted income in the case of non-residents.

Income from foreign and colonial *public* securities charged under Schedule C by deduction, is legally controlled by Rule 2 (*d*) of Schedule C (p. 206), but, in practice, the principle of the above case is applied and a beneficiary of a trust who resides abroad may, even though the trustees reside in the United Kingdom, claim repayment of tax on *any* income from foreign and colonial sources whether the income is received in the United Kingdom or not.

See *Singer* v. *Williams* (1919) (*qq*) and *Hudson Bay Co.* v. *Thew* (p. 215), for definitions of "securities."

Case 5 enacts that—

(1) The tax in respect of income arising from *stocks, shares or rents* in any place out of the United Kingdom shall be computed on the full amount thereof on an average of the three preceding years, as directed in Case 1, whether the income has been or will be received in the United Kingdom or not, subject, in the case of income not received in the United Kingdom, to the same deductions and allowances as are provided in Rule 1

(*q*) 36 T. L. R. 661. (*qq*) 2 K. B. 94.

of the rules applicable to Case 4, and the provisions of this Act, including those relating to the delivery of statements shall apply accordingly.

(2) The tax in respect of income arising from *possessions* out of the United Kingdom, other than stocks, shares or rents, shall be computed on the full amount of the actual sums annually received in the United Kingdom from remittances payable in the United Kingdom, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit or on account in respect of any such remittances, property, money, or value brought or to be brought into the United Kingdom on an average of the three preceding years as directed in Case 1, without any deduction or abatement other than is therein allowed.

Rules 3 and 4 are similar to Rules 2 and 3 respectively of Case 4.

See *Colquhoun* v. *Brooks* (p. 215), *Singer* v. *Williams* (p. 207), and *Hudson Bay Co.* v. *Thew* (p. 215) for definition of "possessions."

Deductions.—Rule 1 allows, in regard to income which is not remitted here, "the same deductions and allowances" as if it had been received in the United Kingdom, *i.e.* non-remittance is irrevelant to assessability. The inclusion of non-remitted income under Cases 4 and 5 did not increase the maximum liability as it was only machinery, and therefore those cases only charge income that can actually be remitted. Case 4, which covers securities, prohibits deduction, and Case 5, which covers other income derived from abroad (and which is not assessable under Case 1 (p. 48)), admits such deductions as are admissible under Case 1, which thereby extends to Case 5 the deduction of any expenses incurred "wholly and exclusively" for the purpose of the production of the income, but there is no allowance for expenses connected with the distribution thereof.

In *Aikin* v. *Macdonald's Trustees* (1894) (*r*), the Trustees distributed amongst beneficiaries the income from trust property abroad, and it was held that the expenses incurred in managing the trust could not be deducted and that the

(*r*) 32 Sc. L. R. 85; 22 R. 88; 3 Tax Cas. 306.

deduction authorized is that incurred prior to the receipt in the United Kingdom.

The assessable income in the case, *e.g.* of rents, is the net amount after paying outgoings such as repairs.

Rule 1 to both cases further authorizes allowance for foreign or colonial income tax, which, apart from securities, was permissible prior to the passing of the section. (See "Foreign Tax," p. 236; and also "Dominion Income Tax Relief" (p. 355).) Interest, annuity, or other annual payment, payable out of the income to a person residing abroad is also deductible; the restriction as to residence is necessary owing to the fact that interest payable to a person residing in the United Kingdom would be assessable income subject to deduction of tax by the payer. (See p. 388.)

In the case of private individuals having pure investments abroad, the question of assessability under Case 1 does not arise, but with Companies such as Insurance and Financial, it was urged by the Crown that the foreign investments were held as part of the business of the Company, and that the foreign profits should fall into the general profits, but as, in many instances, the Companies did not have the foreign profits remitted home, it was sought to avoid their taxation by bringing them under Cases 4 or 5.

As will be seen from Rule 2 of the Miscellaneous Rules of Schedule D, liability to Income Tax under Cases 4 and 5 does not attach if the residence in the United Kingdom is temporary, and not for the purpose of establishing a residence, *and* does not extend to a period of six months in the year.

With trading concerns, assessment under Cases 4 and 5 was generally preferable to assessment under Case 1, but since the withdrawal of the stipulation as to remittance, Case 1 has the advantage of allowing the foreign profits to fall into the general profits, and thereby reducing the assessability where a loss is made, whereas Cases 4 and 5, which are comparable with the assessment of interest (p. 266), involve a gross and isolated assessment. Thus, assuming that a company having profits

from foreign investments of £1000, made a loss of £2000 before crediting the foreign profits, the assessment of the latter under Case 1 would be *nil* as the loss would be merely reduced to £1000, whereas under Cases 4 and 5 an assessment on £1000 would be made irrespective of the general loss. (See, however, p. 261.) Moreover, under Case 4 assessment is not made on average (*ante*).

An aspect of foreign profits of British residents arises in connexion with British trading Companies having interests in concerns abroad. If the foreign concerns are part and parcel of the home concern, No. 1 of Schedule D (p. 48) is sufficient to bring their profits in the general assessment on the business under Case 1, but in the cases which went to the Courts prior to the Finance Act, 1914, the assessability under the respective Cases was determined in certain circumstances which are referred to below. These cases are of considerable moment owing to the importance and controversial nature of the question of assessment of foreign profits.

As regards *trading* the assessment falls under—

Case 1, if the trade is *wholly or partly* carried on in the United Kingdom, and conversely under—

Case 5, if *no part* of the trade is carried on in the United Kingdom.

Rule 1 of Case 5, charging *non-remitted* income, *does not cover trading profits* (*ante*).

Assessable under Case 1.

Temporary Advances.—Interest on temporary advances made by a wool-broking company on security of second mortgages or on wool and produce, falls under Case 1. The advances fluctuated in amount from time to time as the produce was realized. *Smiles* v. *Australasian Mortgage and Agency, Ltd.* (1888) (*s*).

This case was distinguished from *Scottish Mortgage Company* v. *McKelvie* (p. 216), and *Smiles* v. *Northern Investment*

(*s*) 25 Sc. L. R. 645; 15 R. 872; 2 Tax Cas. 367.

Company (p. 201), and the LORD PRESIDENT pointed out that although these Companies, who borrowed money here to make investments in securities abroad, were trading companies and might have been assessed under Case 1 on profits of trade, they were equally within Case 4 because their profits consisted distinctly of interest upon "colonial securities," whereas, in the case in question, the advances were not in the nature of investments of money, but advances of the most irregular and fluctuating description. His Lordship materialized the vital distinction between Case 1 and Case 4 by stating that the injustice of assessment under Case 4 was apparent by—

> "I think this is proper trading and nothing else, and not investment of money upon securities. . . . Supposing that they had a very large amount of advances upon such fluctuating securities as those, and that they are held to have received interest upon these in this country within the meaning of the Fourth Case, and that upon the other branch of their business they have sustained very heavy losses—losses which they require all the returns from these advances to compensate and wipe off, the result would be that, instead of setting one part of the business against the other, the profit upon these advances against the losses upon other transactions, they would be compelled to pay income tax upon that part which consists of advances upon securities of wool, and discounts of bills, and everything of that kind, instead of being allowed to take the profit on the one part of their business, and set it against the loss upon the other part of their business."

Railway Abroad.—An English Company, with the control and direction of the business in England, was formed in order to make and work a railway in Brazil. All the meetings were held in London, where the accounts were kept and dividends declared. It was held that the Company were chargeable under Case 1 on the whole of the profits and not under Case 5. *San Paulo (Brazilian) Railway Company, Ltd.* v. *Carter*, [1896] (*t*).

The Company contended that the Railway constituted a "foreign possession" within Case 5.

LORD WATSON cited a rule relating to trades, that "every

(*t*) A. C. 31; 65 L. J. Q. B. 161; 73 L. T. 538; 44 W. R. 336; 3 Tax Cas. 407.

interest in the profits of trade belonging to a person who is within the meaning of the Acts resident in the United Kingdom, must be charged under the First Case of Schedule D, if the trade is carried on either wholly or partly within Great Britain or Ireland, and is chargeable under the Fifth Case, if the trade is exclusively carried on in any of Her Majesty's dominions out of the United Kingdom."

The above case was followed in *Denver Hotel Co., Ltd.* v. *Andrews*, [1895] (*a*), where an hotel in the United States was acquired by the Company, which was formed for the purpose. The hotel was managed by a servant of the Company, and the registered office of the Company was in London, and dividends were declared, accounts kept, and meetings held in England. Dividends of English shareholders were paid in England, and of American shareholders in America out of funds there.

Bank.—An English bank, with head offices in London, had branches abroad, and was held to be assessable on the whole profits under Case 1. Meetings were held in London and the business directed from there: *London Bank of Mexico* v. *Apthorpe*, [1891] C. A. (*b*).

The MASTER OF THE ROLLS ruled that the Company was carrying on one business, in England, and that some transactions were carried out abroad, but at the direction and will "of the masters and owners of that business resident in London."

> "If a person carries on two businesses, one in England, which he carries on in England in the ordinary sense of the word, he may carry on another wholly distinct from that first business, a business abroad, if the business abroad is carried on wholly distinct from the business in England, you must not charge the two together. You must deal with the one in England as a business carried on in England, and with the other as a business carried on solely abroad, and assess accordingly."

Oil Wells.—A Company formed to acquire and work oil wells in Galicia had the registered office at Westminster, where

(*a*) 43 W. R. 339; 11 T. L. R. 238; 3 Tax Cas. 356.
(*b*) 2 Q. B. 378; 60 L. J. Q. B. 196, 653; 65 L. T. 601; 39 W. R. 564; 3 Tax Cas. 143.

meetings were held and dividends declared and paid. All the shareholders were resident in the United Kingdom. The assessment was held to fall under Case 1. *Grove* v. *Elliots and Parkinson*, [1896] (*c*).

Foreign Breweries.—An English Company acquired a brewery in the United States from an American Company, and as the laws of the State of Illinois prohibit alien corporations from holding real property, the American Company was kept in being. The majority of the shares in the English Company were held in America, where the manufacture and sale of the beer was carried on. The entire control of the American Company lay with the directors of the English Company, but such power was delegated to a committee of management in America, consisting of the former directors of the American Company. The books relating to the American business were kept in America, but reports were sent to and considered in England. The meetings of the English Company were held in England, where dividends were declared and the general books kept. Dividends on shares of the English Company held in America, were paid there out of the profits of the brewery, and only sufficient to pay the English dividends and expenses was remitted to England. *St. Louis Breweries, Ltd.* v. *Apthorpe* (1898) (*d*).

WRIGHT, J., in deciding that the assessment should be under Case 1 on the whole of the profits, said that the business carried on by the English Company was, as expressed in their Articles, the business of managing the American company in the interests of the English shareholders, and that the business was therefore carried on by the English Company, all necessary acts being done in London.

> "Upon the question of fact which has been submitted to us here, I myself entertain no doubt that the English Company is carrying on effectively a business, and that the nature of that

(*c*) 3 Tax Cas. 481.

(*d*) 79 L. T. 551; 63 J. P. 135; 47 W. R. 334; 15 T. L. R. 112; 4 Tax Cas. 111.

business was, through the possession of a preponderating influence in the American Company, to manage its affairs."

Business Abroad.—A person resident in Aberdeen was the sole owner of a business in Canada, which business was carried on by managers who had no power to act apart from the expressed or implied authority of the said owner who was alone entitled to the profits and liable for the losses. It was held that the assessment was to be made under Case 1 and that it was irrelevant that the owner never exercised his power of control. *Ogilvie* v. *Kitton*, [1908] (*e*).

LORD STORMONTH DARLING, referred to the House of Lords decision in *San Paulo (Brazilian) Railway Company, Ltd.* v. *Carter* (p. 211), that assessment must be made under Case 1 on the balance of the profits or gains of the trade when the trade is carried on either wholly in the United Kingdom or partly within and partly outside the United Kingdom. The "head and brain of the trading adventure" were in Aberdeen, weekly statements of the transactions of the business were sent there, and the owner there had the sole right to manage and control every department. His Lordship disposed of a contention that the owner never attempted to exercise his control, by pointing out that the right of control was vested in the owner who might at any moment exercise it, and *Colquhoun* v. *Brooks* (p. 215) (*f*) was cited as holding that a person cannot escape from liability under Case 1 unless he is able to show that no part of the trade is carried on within the United Kingdom.

LORD ARDWALL expressed a doubt as to whether the mere possession of "full control" by a person in this country brings the business over which such control exists, within the category of a business partly carried on in this country, but he decided that the business in question was partly carried on in this country.

Investments Abroad.—(See *Liverpool and London and*

(*e*) S. C. 1003; 45 Sc. L. R. 725; 5 Tax Cas. 338.
(*f*) (1889), 14 App. Cas. 493; 59 L. J. Q. B. 53; 61 L. T. 518; 38 W. R. 289; 2 Tax Cas. 490.

Globe Insurance Co. v. *Bennett*, as to the Crown's option of assessment under Case 1 or under Cases 4 and 5, at p. 261.)

Assessable under Cases 4 and 5.

Partner in Firm Abroad.—A *sleeping* partner in an Australian firm carrying on business entirely abroad was held to be assessable under Case 5 on "foreign and colonial possessions." *Colquhoun* v. *Brooks* (1889) (*g*).

LORD FITZGERALD stated that the Australian firm did not appear to carry on any portion of their business in this country, and that the partner in question did not appear to have taken any active part in the conduct of the business.

LORD HERSCHELL defined "possessions" in Case 5 as—

> "When, therefore, the term 'possessions' is employed it seems to indicate an intention to cover by it something more than property." And it is difficult to see why, unless the intention were to embrace something more, the latter word was not used. 'Possessions' is a wide expression; it is not a word with any technical meaning; the Act supplies no interpretation of it. And I cannot see why it may not fitly be interpreted as relating to all that is possessed in Her Majesty's dominions out of the United Kingdom, or in foreign countries. And if so, I do not think any violence would be done to the language if it were held to include the interest which a person in this country possesses in a business carried on elsewhere."

LORD MACNAGHTEN also held that the word "possessions" is to be taken in the widest sense possible, as denoting everything that a person has as a source of income.

Interest on Instalments.—In *Hudson's Bay Company* v. *Thew* lands were sold and payment made by annual instalments carrying interest. It was held that the interest was liable and was from a "security" under Case 4.

The following provision, having the professed intention of placing "a private firm in the same position as a Company" is enacted by Rule 12 to Cases 1 and 2 of Schedule D :—

(1) Where any trade or business is carried on by two or

(*g*) 14 App. Cas. 493; 59 L. J. Q. B. 53; 59 L. T. 850; 38 W. R. 289
2 Tax Cas. 490

more persons in partnership, and the *control and management of such trade or business is situate abroad*, the trade or business shall be deemed to be carried on by persons resident outside the United Kingdom, and the said partnership shall be deemed to reside outside the United Kingdom, notwithstanding the fact that some of the members of the said partnership are resident in the United Kingdom and that some of the trading operations of the said partnership are conducted within the United Kingdom.

(2) Where any part of the trade or business of a partnership firm whose management and control is situate abroad consists of trading operations within the United Kingdom, the said firm shall be chargeable in respect of the profits of such trading operations within the United Kingdom to the same extent as, and no further than, a person resident abroad is chargeable in respect of trading operations by him within the United Kingdom, notwithstanding the fact that one or more of the members of the said firm are resident in the United Kingdom :

Provided that for the purpose of charging any such firm in respect of the profits of the said trading operations within the United Kingdom, an assessment may be made on the said firm in respect of the said profits in the name of any partner resident in the United Kingdom.

The effect of this provision is that there is no liability under Case 1 on the *full* profits of the partnership, but only on :—

(*a*) The profits made in the United Kingdom (under Case 1).

(*b*) Remittances of profits from abroad to resident partners (Case 5).

Mortgage Company.—Where a mortgage company raised money in this country and invested it abroad in securities at a higher rate of interest, the interest received is assessable under Case 4. *Scottish Mortgage Company of New Mexico* v. *McKelvie* (1886) (*h*). The company contended that the assessment should be under Case 1 on the profits.

(*h*) 14 R. 98 ; 24 Sc. L. R. 87 ; 2 Tax Cas. 165.

The LORD PRESIDENT observed that this was undoubtedly a trading Company, and that the duty might have been charged under Case 1 on the balance of the profits or gains, but the question at issue was whether it could be lawfully charged under Case 4 on interest accruing from foreign securities. He pointed out that where an item is assessable under Case 1 *or* Case 4, the Revenue has the option of choosing the case most favourable to the Revenue (see p. 261).

Trust Company.—An English Trust Company was formed to acquire shares in English and foreign companies manufacturing explosives, and the dividends on the shares in the foreign companies were retained abroad, as the profits from the English shares were sufficient to pay dividends to shareholders resident in the United Kingdom. It was held that the assessment should be made under Case 5, as the shares in the foreign companies were "foreign possessions," and that the Company did not trade or carry on a manufacturing business, but it merely invested its capital in buying shares in subsidiary companies. Two of the latter carried on business in the United Kingdom, while the remaining four did not. *Nobel Dynamite Trust Co.* v. *Wyatt*, [1893] (*i*).

Insurance Companies.—(See Insurance Company, p. 247.)

Company Holding Shares in another Company.—An English Company was formed to bring all Kodak companies throughout the world under one control, and the English company acquired 98 per cent. of the shares of the American Kodak Company, and retained the services of the founder and manager of the American business. The owners of the balance of 2 per cent. of the shares were independent of the English Company, and the latter gave power of attorney to the American manager and two other persons in America to hold its proxies to vote at meetings of the American Company. Goods were bought and sold between the two companies in the ordinary way.

(*i*) 2 Q. B. 499; 62 L. J. Q. B. 525; 69 L. T. 561; 42 W. R. 173; 3 Tax Cas. 224.

It was held that the American Company was not the business of the English Company and assessable under Case 1, but that the control of the latter Company over the former was the control of shareholders only, and therefore assessable under Case 5. *Kodak Ltd.* v. *Clark*, [1903] (*k*).

The above case was followed in *The Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] C. A. (*l*). A German Company was formed by uniting other companies, one of which was an English Company whose undertaking was subsequently acquired by The Gramophone and Typewriter, Ltd. The latter Company acquired *all* the shares of the German Company.

Bearer Bonds.—(See also Insurance Companies, p. 247.)

An Insurance institution invested money abroad in bearer bonds, and the interest received became part of the income of the Institution. The bonds were sent to this country and sold. It was held that the assessment should be under Case 4. *Scottish Provident Institution* v. *Farmer* (1912) (*m*).

Alteration of Articles.—An English Company acquired hotels in Egypt, and altered its Articles of Association so as to permit, not merely a local board in Egypt, but for investing the Egyptian Board with the exclusive management and control of the Egyptian business. The Special Case found that this was not a mere form, but that the trade had since been carried on in accordance with those altered articles. It was held that the Company were taxable under Case 5 on remittances. *Egyptian Hotels, Ltd.* v. *Mitchell*, [1915] H. L. (*n*).

The MASTER OF THE ROLLS said in the Court of Appeal that the whole question was whether the Company's trade had been carried on in England in the sense that contracts had been made there, or that there had been such a control by the general board in England as brought the profits earned, within the Income Tax Acts. He held that the fact that the General Board might

(*k*) 1 K. B. 505; 72 L. J. K. B. 369; 88 L. T. 155; 51 W. R. 459; 4 Tax Cas. 549.
(*l*) 2 K. B. 89; 77 L. J. K. B. 834; 99 L. T. 39; 5 Tax Cas. 358.
(*m*) Sess. Cas. 452; 49 Sc. L. R. 435; 6 Tax Cas. 34.
(*n*) A. C. 1022; 59 S. J. 649; 31 T. L. R. 546; 6 Tax Cas. 542.

starve out the Egyptian Board because the remuneration of the Egyptian Board depended on the General Board, did not amount to carrying on business by the General Board, neither was the fact that the General Board were the only people who could raise fresh capital material, nor did the fact that the London Board could determine how much of the profits were to be distributed make any difference.

This recent case is of considerable importance as it decided that an alteration of the Articles is effective in avoiding the whole profits of the trading carried on abroad, being assessed. Moreover, the MASTER OF THE ROLLS held that his decision was not affected by decisions in previous cases.

CHANNELL, J., pointed out that spending the profits of a business is not carrying on the business, nor is any other way of dealing with the profits any more a mode of carrying on the business.

In the House of Lords, on the appeal of the Crown, opinion was equally divided, and the appeal was therefore dismissed. LORD PARKER supported the rule that where the *whole* or *part* of a business is carried on in this country the *whole* profits must be assessed under Case 1, and he stated that although in *Colquhoun* v. *Brooks* (1889) (p. 215) the latter was a *sleeping* partner he was not so dealt with in the partnership deed, and he had power at any time to take up active management but had not done so during the period of assessment. *San Paulo (Brazilian) Railway Co., Ltd.* v. *Carter* (1896) (p. 211) was supported, and his lordship stated that no single act had been done in or directed from this country by way of participation in or furtherance of the trade of the company during the period covered by the assessment. The trade was that from which the profits could arise, not the business of disposing and dividing such profits when they had arisen, and unless some act in carrying on the business is done or directed by a person resident in the United Kingdom, the business is wholly carried on abroad and, therefore, not assessable.

See *Aramayo & Co.* v. *Ogston* (1923).

Place of Assessment.—An important question was raised

in *Kensington Income Tax Commissioners* v. *Aramayo*, [1916] H. L. (*o*), and resulted in sec. 32 of the Finance Act (No. 2), 1915 (now Rule 4 of the Miscellaneous Rules of Schedule D), which repealed sec. 108 of the 1842 Act, and provided that a person may be assessed by the Commissioners for any place where he ordinarily resides whether or not he is engaged in any trade or employment. Assessments were made in South Kensington in respect of foreign possessions under Case 5. These assessments were not appealed against, but a rule *nisi* was obtained for a writ of prohibition to prohibit the Kensington Commissioners from proceeding on any of those assessments, on the following grounds :—

The whole of such profits were derived from foreign possessions and were received in the City of London and not elsewhere, and, under sec. 108 of the Income Tax Act, 1842, were only assessable by the Commissioners acting for the City of London.

A further ground was subsequently urged that sec. 106 of the 1842 Act (now Rule 4 of the Miscellaneous Rules of Schedule D), restricted assessment to that by the Commissioners of the place where the business was carried on, viz. the City of London.

Sec. 108 enacted that foreign possessions or securities might be stated to and assessed by the Commissioners for London, Bristol, Liverpool, or Glasgow, whichever was nearest to the place at which the income was imported.

SWINFEN EADY, L.J., supported the following previously expressed dicta on the question of prohibition lying when Commissioners act without jurisdiction :—

> " My view of the power of prohibition at the present day is that the Court should not be chary of exercising it, and that whenever the Legislature entrusts to any body of persons other than to the superior Courts the power of imposing an obligation upon individuals the Courts ought to exercise as widely as they can the power of controlling those bodies of persons if those persons admittedly attempt to exercise powers beyond the powers given to them by Act of Parliament."

His Lordship said that the special provisions with regard

(*o*) A. C. 215 ; 84 L. J. K. B. 2169 ; 59 S. J. 715 ; 31 T. L. R. 606.

to Schedule D begin with sec. 100 of the 1842 Act. Sec. 106 provided for the districts in which every person was to be charged or chargeable to the said duties in Schedule D. Every person engaged in any trade (which is the case of the appellant), was chargeable by the respective Commissioners acting for the parish or place where such trade was carried on. The section then proceeded: "And in order that the place where the said last-mentioned duties are to be charged may be ascertained," every person is required, on delivering a list or statement, to deliver a declaration in writing, signed by him, "declaring in what place he is chargeable." In his Lordship's opinion sec. 106 determined where, and where alone, a person was assessable to the duties in Schedule D, subject only to the alternative provisions of sec. 108, which gave an option to the person liable to assessment.

Rule 4 of the Miscellaneous Rules of Schedule D allows assessment where the tax ordinarily resides or where he carries on any business.

Rents.—See *Swedish Central Railway* v. *Thompson* (1923), where control abroad but liability on rent received.

British Profits of Foreign Residents.

The assessment of foreign residents involves essentially a question of whether the foreign resident is assessable here in his own name, or is assessable through an agent. As provided by No. 1 of Schedule D (p. 48), there is assessability in respect of the property, or the trade, profession, or employment carried on in the United Kingdom, even though the person so holding or carrying on is not a British subject.

Contracts.—The liability is to a material extent determined by the question of contracts, and it is established that liability attaches if:—

(*a*) Contracts are made in the United Kingdom and delivery is effected here.

(*b*) Contracts are made in the United Kingdom and delivery is effected abroad.

(*c*) Contracts are made abroad but delivery given through an agent in the United Kingdom.

Liability does not attach if both contracts and delivery are made and given abroad, but see Rules 5 to 14 of the General Rules of all Schedules in the 1918 Act (p. 223).

Agents.—The liability of agents is governed by Rules 5 and 13 of the General Rules, which enact that—

> A person not resident in the United Kingdom, whether a British subject or not, shall be assessable and chargeable in the name . . . of any . . . factor, agent, receiver, branch or manager, *whether such factor, agent, receiver, branch or manager has the receipt of the profits or gains or not*, in the like manner and to the like amount as such non-resident person would be assessed and charged if he were resident in the United Kingdom, and in the actual receipt of such profits or gains.

Prior to 1915, this provision (sec. 41 of the 1842 Act) only charges an agent, etc., having the *receipt* of any profits or gains. In the interpretation of this section in *Grainger and Son* v. *Gough* (see p. 229), it was held that "there is no reason why an agent should be chargeable who was not in *receipt* of profits or gains."

In *Crookston Bros.* v. *Furtado* (p. 234) this dictum was said to mean "*lawfully* in receipt," and that an agent is not *lawfully* in receipt of money due to the principal under a contract made in the name of the principal "because the purchaser chooses or is induced by the agent to make the cheques payable to him." It was further held that it was clear that the contemplation of the 1842 Act was that agents should only be liable for their principals when "they had in their own hands the means of recouping themselves by having the receipt in money of profits and gains belonging to their principals."

The agent should only be charged when the principal cannot be personally assessed, owing to absence. Accepting Lord Morris's dictum, an assessment could not be made on the agent in question if "payment were made direct to the trader abroad," but sec. 31 of the Finance (No. 2) Act, 1915 (now Rules 5 to 14), made an important amendment with a view to assessing foreigners who, by means of collusive agreements,

trade here through agents but escaped tax on the previously existing law.

See *Wilcock* v. *Pinto* (1923).

Rule 6.—A non-resident person shall be assessable and chargeable in respect of any profits or gains arising, *whether directly or indirectly*, through or from any factorship, agency, receivership, branch, or management, and shall be assessable and chargeable in the name of the factor, agent, receiver, branch, or manager.

(7) Where a non-resident person, *not being a British subject* or a British, Indian, Dominion, or Colonial Firm or Company, or branch thereof, carries on business with a resident person, and it appears to the Commissioners by whom the assessment is made that, *owing to the close connexion between the resident person and the non-resident person, and to the substantial control exercised by the non-resident person over the resident person*, the course of business between those persons can be so arranged, and is so arranged, that the business done by the resident person in pursuance of his connexion with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business, the non-resident person shall be assessable and chargeable to income tax in the name of the resident person as if the resident person were an agent of the non-resident person.

(8) Where it appears to the Commissioners by whom the assessment is made or, on any objection or appeal, to the general or special Commissioners, that the true amount of the profits or gains of any non-resident person chargeable with tax in the name of a resident person *cannot in any case be readily ascertained*, the Commissioners may, if they think fit, assess and charge the non-resident person on a **percentage of the turnover** of the business done by the non-resident person through or with the resident person in whose name he is chargeable as aforesaid, and in such case the provisions of this Act relating to the delivery of statements by persons acting on behalf of others shall extend so as to require returns to be given by the

resident person of the business so done by the non-resident person through or with the resident person, in the same manner as statements are to be delivered by persons acting for incapacitated or non-resident persons of profits or gains to be charged.

(9) (1) The amount of percentage under the last preceding rule shall in each case be determined, having regard to the nature of the business, by the Commissioners by whom the assessment on the percentage basis is made, subject, in the case of an assessment made by the additional Commissioners, to objection or appeal to the general or special Commissioners.

(2) If either the resident person or non-resident person is dissatisfied with the percentage determined either in the first instance or by the general or special Commissioners on objection or appeal, he may, within four months of that determination, require the Commissioners to refer the question of the percentage to a referee or board of referees to be appointed for the purpose by the Treasury, and the decision of the referee or board shall be final and conclusive.

(10) Nothing in these rules shall render a non-resident person chargeable in the name of a broker or general commission agent, or in the name of an agent not being an authorized person carrying on the regular agency of the non-resident person or a person chargeable as if he were an agent in pursuance of these rules, in respect of profits or gains arising from sales or transactions carried out through such a broker or agent.

(11) The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him chargeable in pursuance of these rules in the name of a resident person shall not of itself make him chargeable in respect of profits arising from those sales or transactions.

Rule 13 makes the agent, etc., "answerable for all matters required to be done under this Act for the purpose of assessment and payment of tax." Rule 14 allows him to retain the tax from his principal's monies and indemnifies him.

Merchanting Profits.—Rule 12 provides that, where

the non-resident is a *manufacturer* the liability may be made on the *merchanting* or *retailing* profit only. This is worked by charging goods at the price which would be paid by a retailer here for similar goods and only expenses incurred in the United Kingdom. In charging on the *total* profits a deduction is permissible for manufacturing costs and overhead expenses abroad. Rule 12 reads :—

> Where a non-resident person is chargeable to income tax in the name of any branch, manager, agent, factor or receiver in respect of any profits or gains arising from the sale of goods or produce manufactured or produced out of the United Kingdom by the non-resident person, the person in whose name the non-resident person is so chargeable may, if he thinks fit, apply to the commissioner by whom the assessment is made, or in the case of an appeal to the general or special commissioner, to have the assessment to income tax in respect of those profits or gains made or amended on the basis of the *profits which might reasonably have been expected to have been earned by a merchant* or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold, who had bought from the manufacturer or producer direct and on proof to the satisfaction of the commissioner concerned of the amount of the profits on the basis aforesaid, the assessment shall be made or amended accordingly.

(See p. 369 for Assessment when dividends, etc., are paid through an agent, and p. 222 for Deduction of Tax.)

Cable Companies.—A foreign Company had submarine cables, three being connected with the United Kingdom, and others not so connected. The Company had offices here and also worked land wires, but derived no profit from the latter. *Erichsen* v. *Last* (1881), C. A. (*p*).

In sending a message from this country to *e.g.* Japan, the message would pass over : (1) The lines of the Post Office in this country, (2) the marine cables of the Company, (3) land lines in Denmark, belonging to the Danish Government, (4) cables in the Baltic belonging to the Company, (5) land lines in Russia, belonging to the Russian Government, and (6) cables south and east of Russia belonging to the Company.

(*p*) 8 Q. B. D. 414 ; 51 L. J. Q. B. 86 ; 45 L. T. 703 ; 46 J. P. 357 ; 30 W. R. 301 ; 1 Tax Cas. 351, 357 ; 4 Tax Cas. 422.

The total charges from the handing-in station in the United Kingdom to the place of destination abroad were, except as hereinafter stated, collected and received by the Post Office Telegraph Department, which retained out of such total charges the sums due to it out of agreements in respect of messages sent from the United Kingdom to abroad and received in the United Kingdom from abroad, and handed over the balance to the Company, which in its turn retained out of such balance the sum due to the Company in respect of the transmissions of messages over the cables and lines of the Company, and paid over the residue to the various Governments and Companies respectively entitled to the same.

By special arrangement with the Post Office, the Company received payment direct from a few firms who desired to hand in their messages direct to the Company, and accounted, out of such receipts, to the Post Office.

The expenses incurred by the Company in the transmission of messages over the said separate wires in the United Kingdom exceeded the earnings received by the Company in respect of the same, and no profits were made by the Company from the use of the land lines in the United Kingdom.

LINDLEY, J., decided that the Company were assessable on the profits which accrued to them here from carrying on their business in this country, *i.e.* on the net profits from the sums received here, and he was of the opinion that the Company did not carry on business in the United Kingdom, but that it did not follow that the Company did not receive profits from a trade exercised here.

The MASTER OF THE ROLLS said—

> "Now, it appears to me a plain case of carrying on trade in this country; in the first place they generally receive payment in this country for messages sent from abroad, and they do transmit those messages from stations in this country abroad. I think either will do, and I think both will do to make it carrying on a trade. I think a carrier who simply regularly undertakes the carriage of goods abroad for money paid in this country as part of his ordinary business would be carrying on trade in this country, although the whole of the carriage was

done abroad. . . . Again, it appears to me that if a railway company had a station at Dover and a station at Calais, and a foreign company established at Calais, and it carried passengers from Dover to Calais as a regular thing, that that would be a trading in Dover as far as regards the passengers carried from Dover to Calais."

Profits were defined as "take what money they receive and deduct from what it costs them to send the messages."

BRETT, L.J., ruled that it was immaterial that the foreigners' duties in connexion with the contract were wholly executed abroad.

Foreign Dividends.—The shareholders in a foreign bank had the option of requiring payment of dividends either at the London agency of the bank or abroad. The agency profits were sufficient to pay dividends claimed in London, so that no remittances were made from abroad. It was held that the agency was entrusted with payment within sec. 10 of the Income Tax Act, 1853 (now Rule 7 of the Miscellaneous Rules of Schedule D), which provides that any person entrusted with payment of any "interest, dividends, or other annual payments payable out of or in respect of the stocks, funds, shares, or securities of any foreign or Colonial Company," is required to deliver to the Special Commissioners, accounts of amounts payable, and to pay tax thereon. *Gilbertson* v. *Fergusson* (1881), C. A. (*q*). It was decided, however, that in the assessment of the dividends on the agency, an allowance should be made in respect of that portion which arises from the previously taxed profits of the English agency. The bank (Imperial Ottoman Bank) would be taxable on its profits made in England.

BRETT, L.J., said—

"Therefore if part of the dividends in respect of which the income tax is payable is also in respect of profits earned from a business in England, the tax on that part would have to be paid twice over, which ought not to be; and as to that, there should be a deduction. In respect, however, of so much of the dividends payable in England as is derived from profits from business carried on in Turkey, it is not paid twice over, and con-

(*q*) 7 Q. B. D. 562; 46 L. T. 10; 1 Tax Cas. 501.

sequently as to that there ought not to be any deduction at all. That being so, it seems to me that the order of the Divisional Court is in substance correct. That order points out the true principle, which is, that in respect of so much of the dividend as is payable out of the profits from the business carried on in England, the income tax is to be paid, not twice, but only once, but that the income tax is also to be paid in respect of so much of the dividend which is paid in England from the profits of business carried on in Turkey."

See also *Weiss, Biheller and Brooks* v. *Farmer* (1922).

Shipping Company.—A foreign shipping Company with registered office at Christiania, where the books were kept and meetings held, owned a ship, and the chartering and all voyage receipts and disbursements were dealt with by a Glasgow firm, who received and retained all funds until required for payment of expenses and dividends. It was held that the Company were not resident in the United Kingdom, but carried on a trade here, and that the profits derived therefrom were assessable on the Glasgow firm as agents. *Jas. Wingate & Company* v. *Webber*, [1897] (*r*).

Issue of Loans.—The Yokohama Specie Bank, Ltd., was assessed as agents of the Industrial Bank of Japan. The latter was established in Japan, was privileged in connexion with financial matters relating to the Japanese Government, and was authorized by Japanese authorities to issue loans in Europe and the United States. The Industrial Bank made arrangements with the Yokohama Specie Bank, Parr's Bank, and the Hong Kong and Shanghai Banking Corporation to issue prospectuses and collect subscriptions. The Yokohama Bank collected the receipts from the other banks, and remitted to the Industrial Bank less commission to all the banks. It was held that the Industrial Bank did not carry on business here, that the work of issuing loans was done by the three banks in England, and that the only assessability was on the commission payable to the latter. *Yokohama Specie Bank, Ltd.* v. *Williams* (1915) (*s*).

(*r*) 34 Sc. L. R. 699; 3 Tax Cas. 569. (*s*) 139 L. T. 860.

Wine Merchant.—An English firm was appointed by a French wine merchant as his sole representative in England for the sale of champagne. Orders were obtained by the English agents and transmitted to the French merchant, who used his discretion as to acceptance of orders. Delivery was given direct from France to the purchaser at the expense and risk of the latter, and payments were usually made direct to the French merchant, although occasionally through the agents. Receipts were sent direct from France to the customer. Payment of the English agents was in the form of commission. It was held that the French merchant did not carry on a trade within the United Kingdom, and therefore was not assessable. *Grainger & Son* v. *Gough*, [1896] H. L. (*t*).

LORD HERSCHELL held that no contracts were made by the agents, who had no authority to accept orders, and that the deliveries were made in France.

> "I think there is a broad distinction between trading *with* a country, and carrying on a trade *within* a country. Many merchants and manufacturers export their goods to all parts of the world, yet I do not suppose any one would dream of saying that they exercise or carry on their trade in every country in which their goods find customers. When it is said, then, that in the present case England is the basis of the business, that the wine was to be consumed here, and that the business done would remain undone but for the existence of the customers in England, I cannot accept this as proof that M. Roederer carries on his trade in this country. . . . I cannot adopt the view that the words, 'having the receipt of any profits or gains,' control the word 'receiver' only, and not the words 'factor' and 'agent.' The word 'agent' obviously cannot extend to every agent for whatever purpose he may be employed, as, for example, to an advertising agent. . . . I think any agent who received for the foreigner exercising such trade moneys which included trade profit, would be within the provisions of sec. 41" (now Rule 5, *ante*).

LORD WATSON stated that there was a very broad distinction between the case of a foreigner making contracts in England, either personally or through an agent, and the case

(*t*) A. C. 325; 65 L. J. Q. B. 410; 74 L. T. 435; 60 J. P. 692; 44 W. R. 561; 3 Tax Cas. 462.

of his making similar contracts in his own country. His Lordship also agreed that purchasing stock in this country with a view to trading in it elsewhere was not carrying on a trade in the United Kingdom. See Rules 5, etc., *ante*.

A French firm consigned wines sometimes direct to its customers here and sometimes to its *del credere* agent here. The firm had an office here and one of the partners visited this country, being here about four months in the year. Payment in all cases was made to the agents. It was held that the firm was assessable on the profits from the sales in this country and that the principal may be assessed when he can be served with the proper notices. *Tischler* v. *Apthorpe* (1885) (*a*).

A French firm had an agent here who received orders and payments. Delivery was given from the stock in England unless the order was large, when the wine was shipped direct from France to the customer. The firm had a banking account in London. It was held that the profits from sales here were taxable. *Pommery & Greno* v. *Apthorpe* (1886) (*b*).

A French firm appointed an English firm as sole agents in England for sale of champagne. The agents secured orders and were paid by commission. The wine was despatched from France direct to the customers, and payments were made either through the agents or direct to the firm. It was held that the firm was liable to assessment on the profits from the trading carried on here. *Werle & Company* v. *Colquhoun* (1888), C. A. (*c*).

The MASTER OF THE ROLLS ruled that the question of whether money is paid in England or not is a strong circumstance but not necessary to the fact that a trade is carried on in England.

See *Wilcock* v. *Pinto* (1923).

Provisions.—A foreign firm consigned goods to an English firm for sale on commission, and the English firm accepted responsibility for payment by the purchasers and sold the

(*a*) 52 L. T. 814 ; 49 J. P. 372 ; 33 W. R. 548 ; 2 Tax Cas. 89.
(*b*) 56 L. J. Q. B. 155 ; 56 L. T. 24 ; 35 W. R. 307 ; 2 Tax Cas. 182.
(*c*) 20 Q. B. D. 753 ; 57 L. J. Q. B. 323 ; 58 L. T. 756 ; 52 J. P. 644 ; 36 W. R. 613 ; 2 Tax Cas. 402.

goods in their own name and received the proceeds. The English firm rendered statements to the foreign firm, crediting full receipts and debiting charges and commission. The debit or credit balance was paid or remitted as the case may be. It was held that the profits of the English sales were assessable through the English firm as agents. *Watson* v. *Sandie & Hull*, [1898] (*d*).

Insurance Company.—(See Insurance Companies, p. 247.)

Delivery.—A foreign Company had an agent in England, and the agent only accepted an order after sending it to the Company and receiving specific authority. The goods were consigned to Liverpool in the name of the agent. It was held that the profits made here were assessable and that the contracts and deliveries were made here. *Turner* v. *Rickman*, [1898] (*e*).

WILLS, J., held that the contracts were made in this country, and that if the delivery were also to take place here, then it was clear that the American Company were carrying on a trade in this country.

> "The delivery was made in this country, and, in my judgment, even if the contract had been made in New York, an executory contract for sale, a man cannot get his money and can make nothing of it unless he delivers the goods in this country; when he does deliver the goods in this country he exercises a trade and carries on a business.

BRUCE, J., stated that—

> "Had the contract been to deliver on board ship at Boston, there would have been a good delivery to the customer of what the customer bought; but so far as the facts are set out in this case, there is no delivery to the customer until after the goods arrive in this country."

Diamond Mines.—A company registered in South Africa, worked diamond mines there, where its head office was situated and its general meetings of shareholders held. Meetings of directors were held both in London and in South Africa, but the London meetings exercised the real control, and the majority

(*d*) 1 Q. B. 326; 67 L. J. Q. B. 319; 77 L. T. 528; 46 W. R. 202; 14 T. L. R. 124; 3 Tax Cas. 611.

(*e*) 4 Tax Cas. 25.

of Directors and Life Governors resided in the United Kingdom. It was held that the company was, for income tax purposes, resident in the United Kingdom, and was assessable under Case 1 on the whole of its profits. *De Beers Consolidated Mines, Ltd.* v. *Howe*, [1906] H. L. (*f*).

The above case was followed in *New Zealand Shipping Co., Ltd.* v. *Stephens*, [1907] C. A. (*g*). The Company was registered and had the registered offices in New Zealand, where business was transacted by the Local Board. Important questions were dealt with by a separate Board in London, where the accounts were prepared and dividends declared. This case came again before the Courts in *New Zealand Shipping Co.* v. *Thew* (1922), H. L., when the Crown again succeeded. The Court distinguished *Egyptian Hotels* v. *Mitchell* (p. 218), and held that the Commissioners' findings of fact were based on sufficient evidence.

The *De Beers* company subsequently transferred the control to South Africa. (See also " Alteration of Articles," p. 218.)

The LORD CHANCELLOR disagreed with the contention that a company only resides where it is registered, and held that the true rule was that a company resides for income tax purposes where its real business is carried on. " A company cannot eat or sleep, but it can keep house and do business. We ought, therefore, to see where it really keeps house and does business. An individual may be of foreign nationality and yet reside in the United Kingdom. So may a company."

His Lordship ruled that the Commissioners' findings of fact could not be impugned. The findings were—

(1) That the trade or business of the appellant company constituted one trade or business, and was carried on, and exercised by, the appellant company within the United Kingdom, at their London office.

(2) That the head and seat and directing power of the affairs of the appellant company were at the office in London,

(*f*) A. C. 455 ; 75 L. J. K. B. 858 ; 95 L. T. 221 ; 22 T. L. R. 756 ; 13 Mans. 394 ; 5 Tax Cas. 198.

(*g*) 24 T. L. R. 172 ; 52 S. J. 113 ; 5 Tax Cas. 553.

from whence the chief operations of the company, both in the United Kingdom and elsewhere, were, in fact, controlled, managed, and directed.

See *Bradbury* v. *English Sewing Cotton Company* (1922), where the control was moved abroad and the Crown then assessed the dividends from a foreign company under Case 5 on a three years' average. The Company claimed that the dividends in the years prior to the transfer (when the Company was charged on the full profits of the foreign company) should not come into the average. The Court of Appeal supported this.

See also *Hood* v. *Magee* (1917).

Residence on Yacht.—An American citizen lived on board his yacht, which was moored in the River Colne within the port of Colchester. Although the yacht was kept ready for sea, it had not left its anchorage for about twenty years. It was held that the appellant was liable as a person residing in the United Kingdom. *Brown* v. *Burt*, [1911] (*h*).

Madras Merchant with House in United Kingdom.—A merchant trading in Madras resided there with his wife during the whole of the year of assessment, *not having visited the United Kingdom.* Although his usual residence was in Madras, he had, in nearly every year prior to the year of assessment, visited the United Kingdom. During the year of assessment some of his children resided in the United Kingdom at a house purchased in the name of the merchant's wife out of moneys belonging to her and to him. It was held that he was not chargeable during the year of assessment as a person residing in the United Kingdom. *Turnbull* v. *Inland Revenue*, [1904] (*i*).

Yarn.—An English firm carried on the business of merchants and commission agents in the United Kingdom, and sold goods for a firm of manufacturers in Belgium. Orders were submitted to the manufacturers for authority to accept on behalf of the manufacturers. No written agency agreement

(*h*) 81 L. J. K. B. 17; 105 L. T. 420; 27 T. L. R. 363; 5 Tax Cas. 667.
(*i*) 42 Sc. L. R. 15, 7 F. 1; 12 Scots Law Times, 367; 6 Tax Cas. 206.

existed, and the goods were consigned to the appellants, who received payment and issued receipts, and who rendered sale accounts to the manufacturers and were paid by commission, being also liable for half of the bad debts. It was held that the manufacturers were carrying on a trade in the United Kingdom, and that the agents were rightly assessed as such. *Macpherson & Co.* v. *Moore*, (1912) (*k*).

Foreign Companies working Foreign Mines.—An assessment was made on the agents in the United Kingdom, of a French company which owned and worked phosphate mines in Algeria. The agents were paid by commission, and had authority to sell, without reference to the company, at or over fixed minimum prices. Payments were made in London, cheques being sometimes drawn in favour of the company and sometimes of the agents, but the cheques were always sent to France, and in no case were they paid into a bank in the United Kingdom. No stock was kept by the agents, and the Bills of Lading were endorsed as soon as received by the agents (while the phosphate was still at sea) and passed on to the purchasers with invoices and insurance policies, in exchange for an instalment of three-fourths of the price.

It was held (LORD DUNDAS dissenting) that the company did not exercise a trade in the United Kingdom, and (unanimously) that the agents were not "agents" within sec. 41 of the 1842 Act (see Rule 5) (*ante*). *Crookston Bros.* v. *Furtado* (1911) (*l*).

Mariners.—A master mariner was abroad for the greater part of the year, his ship running between Glasgow and foreign ports. He had a house at Glasgow where his wife and family resided, and he was held liable to assessment on his salary. *In re Young* (1875) (*m*). The fact of a master mariner being absent from the United Kingdom during the whole of the year of assessment does not alter the assessability. *Rogers* v. *Inland Revenue* (1879) (*n*).

(*k*) S. C. 1315; 49 Sc. L. R. 979; 6 Tax Cas. 107.
(*l*) S. C. 217; 48 Sc. L. R. 134; 5 Tax Cas. 602.
(*m*) 12 Sc. L. R. 602; 2 R. 925; 1 Tax Cas. 57.
(*n*) 6 R. (Ct. of Sess.) 1109; 16 Sc. L. R. 682; 1 Tax Cas. 225.

Foreigner renting House in United Kingdom.—An American, who had no place of business in the United Kingdom and was ordinarily resident in New York, rented a house and shooting in Scotland, where he stayed for about two consecutive months in each year. The owner of the house maintained the establishment, and the keeper had the entire management of the shootings. It was held that the Appellant resided in the United Kingdom for Income Tax purposes, and was therefore assessable under Cases 4 and 5 (p. 205). *Cooper* v. *Cadwalader*, [1904] (*o*).

The LORD PRESIDENT said—

> "His occupation of the subjects is not of a casual or temporary character, but is substantial, and as regards some of its incidents is continuous. . . . Domicile has no bearing on the question, and where a person has in fact a residence in the United Kingdom he is chargeable as a person residing there, although he may also have a residence, or residences, out of the United Kingdom."

His Lordship ruled that the case did not fall within sec. 39 of the 1842 Act (now Rule 2 of the Miscellaneous Rules of Schedule D (p. 204), as the appellant could not reasonably maintain that he was in the United Kingdom "for some temporary purpose only, and not with any view or intent of establishing his residence therein," as he took the house with the intention of establishing his residence there during a material part of each year and of maintaining his connexion with it for years, and, moreover, the residence was always ready for him. It is not necessary in order to a person being chargeable that he shall have his *sole* residence in the United Kingdom.

A merchant trading in Italy, where he was ordinarily resident, had a residence in England at which he resided with his family for several months in the year. It was held that he was a resident of the United Kingdom and liable to assessment on the whole of the profits of the business. *Lloyd* v. *Sulley* (1884) (*p*).

(*o*) 46 Sc. L. R. 117; 12 Sc. L. T. R. 449; 7 F. 146; 5 Tax Cas. 101.
(*p*) 21 Sc. L. R. 482; 11 R. 687; 2 Tax Cas. 37.

The LORD PRESIDENT held that the appellant resided in the United Kingdom, and that a man could have two or more residences in the sense of the Income Tax law.

(See p. 341 as to RELIEF.)

Finding of Fact.

(See also p. 334.)

An important point was raised in *American Thread Company* v. *Joyce*, [1913] H. L. (*q*), where an American company, which did not trade in the United Kingdom, was promoted by an English company which owned, directly or through trustees, the whole of the American company's common stock. The Commissioners found that the control of the management of the company rested with and was constantly exercised by the directors resident in England in extraordinary session, and it was held that this finding could only be impugned on the ground that there was not evidence to justify the Commissioners in arriving at that conclusion, and that therefore the company must be assessed under Case 1.

FOREIGN TAX.

A deduction is allowed in respect of a foreign or colonial Income Tax paid by a company trading abroad.

In *Stevens* v. *The Durban-Roodeport Gold Mining Co., Ltd.*, [1919] (*r*), an English company carrying on gold mining in the Transvaal, paid a tax in the Transvaal of 10 per cent. on the net produce of the mines, and deduction thereof was allowed from the profits of the year to which the tax related, before taking the average.

(See as to foreign Income Tax on securities, stocks, shares, and rents, p. 209, and also the allowance for Dominion Income Tax, p. 355.)

FRIENDLY SOCIETIES, ETC.

Certain exemptions from Income Tax are allowed to Friendly Societies, Trade Unions, and Industrial and Provident Societies.

(*q*) 108 L. T. 353 ; 57 Sol. Jo. 321 ; 29 T. L. R. 266 ; 6 Tax Cas. 1, 163.
(*r*) 100 L. T. 481 ; 25 T. L. R. 316 ; 5 Tax Cas. 402.

Friendly Societies.—Sec. 39 of the Income Tax Act, 1918, provides—

> (1) An *unregistered friendly society* whose income does not exceed £160 shall be entitled to *exemption*.
>
> A *registered friendly society*, which is precluded by Act of Parliament or by its rules, from assuring to any person a sum exceeding £300 by way of gross sum, or £52 a year by way of annuity, shall be entitled to *exemption under Schedules A, C, and D*.

In practice the provision relating to *unregistered* societies is interpreted as—

(*a*) Being confined strictly to "Unregistered Friendly Societies" of which the definition is to be gathered from the Friendly Societies Acts.

(*b*) Giving a claim to repayment (where exemption has previously not been allowed) for a period of three years.

The Friendly Societies Act, 1896, permits registration of the following classes of societies, subject to the society consisting of at least 7 members :—

(1) Friendly Societies for relief in sickness, old age, etc.

(2) Cattle Insurance Societies.

(3) Societies for any benevolent or charitable purpose.

(4) Working-men's clubs.

(5) Societies specially authorized by the Treasury.

The exemption is in respect of any *friendly society* registered under the Friendly Societies Acts. The latter allow registration, as above, of friendly societies and other societies, so that the exemption does not apply to a society other than a friendly society even though it may be registered under the said Acts, thus, *e.g.* money societies which may be registered under class 5 above are not within the exemption.

Money Societies.—Money Societies registered under the Friendly Societies Act, 1896, are not entitled to exemption from Income Tax, but assessment may be restricted to the profits or interest paid to persons who are not exempt.

Savings Banks.—A Savings Bank *certified* under the Savings Bank Act, 1863, is exempt by sec. 39 (3) in respect of

its interest and dividends from investments with the National Debt Commissioners.

Any Savings Bank, *whether certified or not*, is exempt under Schedules C and D, in respect of the income of its funds, so far as such income is applied in the payment or credit of interest to any depositor subject to the following :—

(*a*) The interest is chargeable on the recipient under Case 3 of Schedule D (p. 64).

(*b*) The bank shall make a return to the Inspector of all interest of any depositor when it exceeds £5 per annum.

Expenses of management may be claimed as with companies whose business consists mainly in making investments (see p. 249).

Trade Unions.—The exemptions applicable to a Registered Friendly Society are granted to registered trade unions on similar conditions but in respect of its "interest and dividends which are applicable and applied solely for the purpose of provident benefits."

The term "provident benefits" includes any payment expressly authorized by the registered rules of the union—

(*a*) made to a member during sickness or incapacity from personal injury ; or

(*b*) when out of work ; or

(*c*) to an aged member as superannuation ; or

(*d*) to a member who has met with an accident, or

(*e*) has lost his tools by fire or theft ; or

(*f*) payment of funeral expenses on the death of a member or his wife ; or

(*g*) provision for the children of a deceased member.

Industrial and Provident Societies.—The exemptions extended by sec. 39 (4) to Industrial and Provident Societies, registered under the Industrial and Provident Societies Act, 1893 (which cover Co-operative Societies) do not extend to Schedule A, being restricted to Schedules C and D, and the latter exemption only applies if—

(1) The Society does not sell to non-members ; and—

(2) The number of shares is not limited either by the rules or practice.

The exemption also covers mortgage interest received. (See "Interest," p. 262, for interest paid.)

Registered Friendly Societies may exclude from assessment, interest paid to the society by exempt mortgagors, but the society must allow any mortgagor who has not been exempted (p. 341) to deduct tax in the ordinary manner, and the society can then claim repayment.

(See CO-OPERATIVE STORES, p. 160.)

Building Societies.—Registered Friendly Societies, and Industrial and Provident Societies, when acting as Building Societies, may be assessed under either of the arrangements A and B applicable to Building Societies. (See p. 127.)

FURNISHED HOUSES.

Assessments are made on the profits arising from the letting of furnished houses, and the following deductions are allowed :—

(*a*) The amount of the net Schedule A assessment.

(*b*) Tenant's rates and taxes and Inhabited House Duty, when these are borne by the lessor.

(*c*) Wear and tear of furniture.

(*d*) Wages of servants provided by lessor.

(*e*) Caretaker's expenses involved in maintaining the house when unoccupied.

(*f*) Charges of house agents for obtaining tenant.

Rent.—A deduction is not admissible in respect of the rent paid by a lessor of a furnished house for a house in which to live while the former house is let. *Wylie* v. *Eccott*, [1913] (*s*).

Assuming that a furnished house is let for the whole year at £200 per annum, and the lessor pays £30 rates and taxes, £2 House Duty, and £60 wages, and that the net Schedule A

(*s*) S. C. 16 ; 50 Sc. L. R. 26 ; 6 Tax Cas. 128.

assessment is £45, and the wear and tear of furniture is estimated at £20,—the assessment would be as follows :—

	£	£
Gross rent received		200
Less Net Schedule A	45	
,, Rates and taxes	30	
,, House Duty	2	
,, Wages	60	
,, Wear and tear	20	
	—	157
Assessment =		£43

GAS WORKS.

Gas works are assessable under No. III. of Schedule A on the profits of the preceding year.

(See "Depreciation," p. 187, for special scheme of Depreciation allowances, and p. 56 for treatment of No. III. of Schedule A.)

Foreign Gas Works.—Foreign Gas Works are assessed under Schedule D, as No. III. of Schedule A only applies to the United Kingdom. *Imperial Continental Gas Association* v. *Nicholson* (1877) (*t*).

Municipal Gas Works.—A corporation carrying on a gas works is liable to assessment on the profits made. *Inland Revenue* v. *Glasgow Corporation Gas Commissioners* (1876) (*a*).

The LORD PRESIDENT said—

> "It seems to me that the Corporation of the City of Glasgow is . . . empowered to enter into a speculation as traders in gas. No doubt it may have been for the benefit of the community—that is perfectly true—but they have all the character and attributes of a trading company. They acquired the works for the purpose of manufacturing gas ; they manufactured gas, and sold it to those who were willing to become buyers ; but they can't sell it to anybody, that is to say, they cannot compel anybody to take it who is not willing to do so, and willing to do so at their price."

His Lordship distinguished the case from *Inland Revenue* v. *Glasgow Corporation Water Commissioners* (see p. 298).

(*t*) 37 L. T. 717 ; 1 Tax Cas. 138.
(*a*) 3 R. 857 ; 13 Sc. L. R. 556 ; 1 Tax Cas. 122.

Restoration of Plant.—In *Clayton* v. *Newcastle-under-Lyme Corporation* (1888) (*b*), gas works were acquired in a defective structural condition, and it was held that a deduction could not be made in respect of sums set aside annually to be expended in future years on restoring plant and apparatus.

Lighting of Streets.—In *Dillon* v. *Corporation of Haverfordwest*, [1891] (*c*), the Corporation owned gas works and supplied gas for public lamps free of cost, but charged private customers. It was decided that the expense of lighting the public lamps could not be deducted from the profit derived from supplying private customers.

Pollock, B., said that the Corporation were, as regards the public lamps, in no sense traders. "There are no vendors and there are no vendees."

Charles, J., stated that—

> "Now people cannot trade with themselves, and therefore I do not see in any sense how this Corporation can be held to carry on a trade, so far as their duty of lighting the public streets is concerned. They begin to be tradespeople as soon as they have got customers, and their customers are those who choose to contract with them to take their gas. . . . I think the expenditure in question is not an expenditure for the purposes of the trade in question, which I think was a trade of supplying the private customers only, but for the purpose of enabling the Corporation to enter upon that trade, which is a very different matter."

Dividends.—A gas company is prevented by its special Act from paying dividends exceeding a fixed rate, and in *Ashton Gas Company* v. *A.-G.*, [1906] H. L. (*d*) the company claimed to deduct the Income Tax from its gross profits before paying dividends and then to pay the dividend in full. It was held that this was illegal and that, in determining the rate of dividend, the profits should be calculated as inclusive of income tax payable.

(*b*) 2 Tax Cas. 416.

(*c*) 1 Q. B. 575; 60 L. J. Q. B. 477; 64 L. T. 202; 55 J. P. 392; 39 W. R. 478; 3 Tax Cas. 31.

(*d*) A. C. 10; 75 L. J. Ch. 1; 93 L. T. 676; 70 J. P. 49; 22 T. L. R. 82; 13 Mans. 35.

GIFTS.

Gifts are not assessable, thus if a man makes a voluntary allowance to his son, the latter is not taxable thereon.

In the case of, *e.g.* a college which has gifts, the latter should be excluded from the receipts.

(See Chapter III., p. 46, and Schedule E, "CLERGYMEN," p. 366.)

GOODWILL.

A deduction cannot be made in respect of the writing-down of goodwill.

GRAVES.

(See CEMETERIES, p. 150.)

HARBOUR DUES.

In *Sowrey* v. *King's Lynn Harbour Moorings Commissioners* (1887) (*e*) the Commissioners were empowered to levy dues for the use of the Corporation on all ships navigating the cuts in the Norfolk Estuary, and the dues were to be applied in repaying borrowed money and interest thereon, and the dues were to cease when the repayment was completed. It was held that the dues were assessable after deducting disbursements exclusive of interest and repayment of debts.

(See p. 93.)

HIRE PURCHASE.

Payments are extensively made by, *e.g.* Colliery Companies, to railway-wagon builders for wagons on the hire-purchase system, *i.e.* wagons are purchased by instalments spread over a number of years and the aggregate of these instalments obviously exceeds the *cash* price, covering as it does, interest on unpaid instalments.

The practice was to refuse any allowance in respect of these instalments until it was decided in *Darngavil Coal Company* v. *Francis*, [1913] (*f*), that the portion of the payment attributable to hire should be admitted as a deduction.

(*e*) 3 T. L. R. 516; 2 Tax Cas. 201. (*f*) S. C. 602; 50 Sc. L. R. 427.

Arrangements have now been made for treating wagons acquired under the system of hire-purchase, in accordance with the following scheme :—

Railway Wagons. Scheme for determining the income tax allowances to be granted in respect of payments made in acquiring wagons under hire-purchase agreements.

1. The lessee of wagons under a hire-purchase agreement shall furnish to the Inspector of Taxes a copy of the agreement together with a certificate from the wagon builder, or other satisfactory evidence as to the price at which the wagons would have been sold for cash at the date of the agreement, hereinafter referred to as the initial value.

2. The difference between the initial value and the aggregate amount payable under the agreement shall be treated as " hire " and allowed in equal annual amounts spread over the term of the agreement.

3. Depreciation shall also be allowed on the initial value from the beginning of the agreement in accordance with the provisions of the Income Tax Acts at a rate to be settled by agreement between the lessee and the Crown or by appeal to the Income Tax Commissioners.

4. In the event of any wagons under a hire-purchase agreement being purchased outright before the termination of the agreement or being returned to the lessor, the allowance for hire shall cease from the date of such purchase or return, and if returned the allowance for depreciation shall thenceforth cease.

5. If any such wagons shall be " refinanced " the allowance for hire under the agreement thus terminated shall cease and a fresh allowance shall be made for the period of the new agreement, to be determined by taking the difference between the amount at which such wagons are refinanced at the date of the new agreement and the aggregate amount payable under the new agreement, and spreading the said difference evenly over the term thereof. The allowance for depreciation to be continued without reference to the new agreement.

6. Where any wagons are the subject of hire-purchase agreements current at the date of this scheme or during any of the preceding years upon the average profits of which any income tax assessments are computed, and no allowances for hire have been made in respect of the payments under such agreements, the amount which would have been allowable annually for hire had this agreement been in force at the date of the hire-purchase agreement shall be ascertained and the appropriate amount shall be allowed annually for the remainder of the term of the hire-purchase agreement. Provided that, where the depreciation allowance in respect of such wagons has been

calculated on the aggregate amount payable under the agreement, the total of the amounts allowable as hire under this clause shall be deducted from the said aggregate amount in computing future allowances for depreciation.

Should satisfactory evidence of the initial value of the wagons at the date of the agreement not be available, such value may be computed from the aggregate amount payable under the agreement on the basis of a five per cent. interest table.

7. Where any wagons are the subject of hire-purchase agreements current at the date of this agreement, and allowances have been made in any previous year in respect of the payments under such agreement otherwise than in the form of depreciation, the aggregate amount of such allowances shall be deducted from the aggregate amount allowable under this scheme as " hire " in respect of such agreement, and the balance only shall be allowed in equal annual amounts spread over the remainder of the term of the agreement. Provided that any adjustment of the capital value on which depreciation is allowable rendered necessary by the operation of this clause, shall be made as provided in Clause 6.

GENERAL.

8. The cost of reconstruction and all renewals of parts shall be allowed as repairs, except so far as they constitute an extension, enlargement, or other similar improvement of value.

9. Where such reconstruction and renewals are allowable under this scheme, they shall be allowed notwithstanding that the cost thereof may not have been debited in the company's accounts against Revenue.

10. Where " dead-ends " are converted into " spring buffers," the total cost of such conversion shall be allowed less £5 per wagon, which latter sum shall be treated as the capital value of the improvement, such sum to be added to the value of the wagons for the purpose of computing the annual allowance for depreciation.

11. This scheme shall take effect for 1913–14 onwards, and in calculating the assessable liability shall be applied to each of the five years or other period on the average of which the said liability falls to be computed.

12. The rate of depreciation when agreed upon shall apply to all wagons whether the subject of hire-purchase agreements or not.

(We) desire to adopt the above arrangements and hereby undertake to fulfil the conditions thereof.

Dated Signature.

In paragraph 5 the expression " amounts at which such

wagons are refinanced " means the sum for which the wagons are sold by the lessee or owner to a financing company for the purpose of being reacquired under a "hire-purchase" agreement.

The principle of the above scheme would of course be applicable to other goods acquired by a trader under hire-purchase agreements, and if the benefit of the scheme is specifically refused by the Revenue, the ruling of *Darngavil Coal Company* v. *Francis* (*ante*) is binding on allowance of comparable matters.

The above law and practice deal with the purchaser under hire-purchase agreements and, in effect, allow deduction of any excess over *cash* price. The question also arises in the case of the seller, and there is an extensive business in connexion with the sale of many articles such as sets of books on the instalment system, payments being spread over *e.g.* 5 years. From an accountancy point of view it is incorrect practice to credit the full amount of the purchase money when the sale takes place, and thus bringing into the Profit and Loss Account such amount as part of the sales of the year. It is obvious that before the purchase price is wholly paid, further expenses will be incurred in connexion with the instalments.

For Income Tax purposes, an estimate of the amounts falling due in future years could be deducted from sales, and, in the following year, the estimate should be written back and the new estimate deducted. The authority for such a course may be found in *Sun Insurance Office* v. *Clark*, [1912] H. L. (*g*), where it was decided that, in the case of a Fire Insurance business, an estimated reserve of 40 per cent. of the yearly premium income may be carried forward, representing estimated losses on unexpired risks (see p. 256), while in *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce*, [1915] (p. 104), the point was emphasized that Income Tax profits must be ascertained on commercial principles.

A hire-purchase contract is a sale to the purchaser, with the purchase money on loan from the seller at interest, and

(*g*) A. C. 443; 81 L. J. K. B. 488; 106 L. T. 438; 28 T. L. R. 303; 56 S. J. 375; 6 Tax Cas. 59.

as that portion of the aggregate instalments representing interest may not be received owing to return of the articles acquired, it is clear that crediting full sales would be a commercially insupportable method of accounting. The following system is consistent with law and equity :—

	£
Cost price	60
Cash ,, ...	72
Sale ,, ...	90

The hire-purchase contract is assumed to spread over three years in half-yearly instalments of £15, and each of these instalments is, in reality, composed as follows :—

	£
Cost of manufacture	10
Interest on outstanding money . .	3
Profit	2
	£15

A system (consistent with equity) admitted in practice is to debit £20 against cost and credit £30 in each year.

HOARDINGS.

Advertisement hoardings are assessable under Case 6 of Schedule D (p. 66), and it should be noted that they should be excluded from the Schedule A assessment.

HOP GROUNDS.

Hop grounds are chargeable under Schedule B (see p. 39).

IMPLEMENTS.

A deduction is allowed for supply or repair or alteration of implements of trade. Rule 3 to Cases 1 and 2 of Schedule D (p. 84).

INCOME TAX.

Income Tax paid does not form a deductible allowance (see also *Ashton Gas Company* v. *A.-G.* at p. 241).

Improvements.

A deduction is not admissible in respect of improvements of premises, such expense being an addition to capital.

Rule 3 to Cases 1 and 2 of Schedule D (p. 84).

Infant.

(See Minor, p. 280.)

Industrial and Provident Societies.

(See Friendly Societies, p. 236.)

Insurance.

Insurance against, *e.g.* any possible loss of trading connexion is allowable under *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce*, [1915] H. L. (*h*), where Licence Insurance Premiums were held to be deductible. The premiums were paid to provide against the loss of the trade incidental to the tied houses, occasioned by the taking away of a licence owing, *e.g.* to default of the tenant, and this covers the comparative case of a company paying insurance premiums on the life of an employee who personally influences the business, and whose death would result in a diminution of business. Profits insurance premiums are within the same category, as they are paid to insure against stoppage of profits, while licence insurance premiums provide against stoppage of the profits from a tied house. Licence insurance premiums are, therefore, "profits insurance premiums."

Insurance Companies.

The assessment of Insurance Companies presents some peculiarities in that there are alternate bases of assessment.

Life companies are subject to periodical valuations, and in the case of a company having a quinquennial valuation, the assessable profits equal (subject to the alternate method, *post*) one-fifth of the whole surplus including all bonuses available for distribution, as by the last actuarial valuation. When the

(*h*) A. C. 433; 84 L. J. K. B. 417; 59 S. J. 144; 112 L. T. 651; 31 T. L. R. 104; 6 Tax Cas. 399.

periodical valuation is taken more frequently than quinquennially the profits are calculated accordingly, on the reduced average.

Alternate Methods.—The assessment is only based on the *profits* under Case 1 of Schedule D if they are larger than *interest and dividends* received. If they are less in amount, the interest and dividends from the alternative method of assessment, and any interest received untaxed, *i.e.* which has not been subject to deduction of tax at the source (see p. 388), is assessable on the company direct under Case 3 of Schedule D. The income of an Insurance Company is largely derived from interest and dividends, and, in the case of Life companies, they are compelled by law to maintain very extensive investments.

Separate Assessment and Losses.—Rule 15 of Cases 1 and 2 of Schedule D provides that, where an assurance company carries on life assurance business in conjunction with any other class of insurance business the life assurance business shall be treated as a separate business. Sec. 16 (3) of the Finance Act, 1923, also separates industrial business. For the purpose of setting off a loss on the life assurance business against a profit on any other business under Rule 13 to Cases 1 and 2 (p. 371), and for the purpose of computing a loss under sec. 34 of the 1918 Act (p. 373), income from investments of the life assurance fund shall be treated as part of the profits.

Definitions.—*Assurance Company* is defined by sec. 237 of the Income Tax Act, 1918, as meaning " any persons or bodies of persons to which the Assurance Companies Act, 1909, applies."

Annuity Fund means " where an annuity fund is not kept separately from the life assurance fund of an assurance company, such part of the life assurance fund as represents the liability of the company under its annuity contracts, as stated in its periodical returns to the Board of Trade, under the Assurance Companies Act, 1909."

Foreign Life Assurance Fund is any fund representing the liability of a company in respect of its life assurance business with policy holders and annuitants residing out of the United Kingdom whose proposals were made to, or annuity contracts

granted by, the company at or through a branch outside the United Kingdom and, where such a fund is not kept separately from the life assurance fund, means such part of the latter fund as represents the liability of the company under such policies and annuity contracts, such liability being estimated in the same manner as it is estimated for the purposes of the periodical returns to the Board of Trade, under the Assurance Companies Act, 1909.

Management Expenses.—When assessment is made by the taxed income there is a non-allowance of that part of the expenses of management covered by the difference between such taxed income and the *actual* profits, but sec. 33 of the Income Tax Act, 1918, provides that, in the case of a company carrying on life insurance business, or a company whose business consists *mainly in the making of investments*, and the principal part of the income is derived therefrom, a claim may be made to the Special Commissioners for repayment of tax on management expenses (including commissions), but it is provided that the following factors must be observed if a claim is allowed :—

(1) The relief shall not make the tax paid by the company less than the tax which would have been paid if the *profits* had been charged under Case 1 (p. 48).

(2) Fines, fees, or profits arising from reversions in the case of insurance companies, and any uncharged profits of any other company, must be deducted from the amount of the management expenses. By sec. 16 (2) of the Finance Act, 1923, profits from annuities on human life have to be deducted. These profits are calculated under Case 1 of Schedule D (p. 48), and the provisions of subsec. 1 (p. 258) are to apply. Losses on annuities are allowable as with reversions (*post*).

(3) In determining profits from reversions a set-off may be made of any loss arising from reversions for any year from 1915—1916 onwards.

The claim for management expenses must be made to the Inspector within twelve months after the end of the year of assessment, and the matter may be dealt with before the Special Commissioners in the same manner as an ordinary appeal, while a case may also be required under sec. 149 of the Income Tax Act, 1918 (p. 338). The claim must not include

expenses admissible under Schedule A in respect of maintenance, repairs, insurance, or management of land or houses (p. 26).

Sub-sec. 4 of sec. 33 provides that where an assurance company, *not having its head office in the United Kingdom*, is charged under Case 3 of Schedule D (p. 64) on a proportion of the income from investments of the life assurance fund, or on a basis substituted therefor, the relief for management expenses shall be a like proportion of such expenses.

Where, under Cases 4 or 5 of Schedule D (pp. 205–207) income from the investments of the *foreign life assurance fund* has been relieved from tax "a corresponding reduction" of the relief for management expenses shall be made.

Sec. 16 (4) of the Finance Act, 1923, allows management expenses of mutual assurance companies. See *Bennet* v. *Underground Electric Railways* (1923).

Foreign Companies.—In the case of foreign companies carrying on life insurance business in the United Kingdom through a branch or agency here, and not having the head office in the United Kingdom, the income from the investment of the life insurance fund (excluding the annuity fund, if any) is chargeable under Rule 3 of Case 3 of Schedule D (p. 64) to the extent of that portion of the income which "bears the same proportion to the total income from those investments as the amount of the premiums received in that year from policy holders resident in the United Kingdom and from policy holders resident abroad whose proposals were made to the company at or through its office or agency in the United Kingdom bears to the total amount of the premiums received by the company." When the company has its head office in a British Possession the Board of Inland Revenue may, by Regulations, substitute another basis. The relief for management expenses is to apply in the same proportion as the assessment (*ante*).

The Special Commissioners have the sole jurisdiction for assessment of the above companies.

When the company has been charged by deduction of tax from investments in a sum equal to the charge as ascertained above no further assessment is to be made, and when the taxed income is less than the charge the latter is to be reduced by the amount of the taxed income. Rule 3 (4) of Case 3.

Foreign Investments.—Rule 2 to Case 4 and Rule 3 to Case 5 of Schedule D provide that the liability thereunder on full *income* from foreign and colonial securities, &c., shall not apply to such income of an insurance company arising from investment of the foreign life insurance fund, but that the liability shall be restricted to *remittances* to the United Kingdom. A corresponding reduction in allowance for management expenses must, however, be made.

"Foreign Life Assurance Fund" is defined at p. 248.

(See p. 248 as to alternate methods.)

In *Revell* v. *The Edinburgh Life Assurance Company* (1906) (*i*), the taxed income of the company exceeded the net profits and, in addition, the company received £1123 interest which had not been subject to deduction. The latter interest was held to be assessable under Case 3 and Case 4, the former covering "short term" interests and the latter the interests from foreign securities.

The company claimed under sec. 23 of the 1890 Act (now sec. 34 of the 1918 Act) (see p. 373), that, after eliminating taxed income, a loss was made, but the Commissioners refused the claim as the company's income which had been taxed at the source, formed part of its trade profits, and held that the alleged loss was actually a profit of £66,976 as shown by the following abstract :—

EXPENDITURE.	£	REVENUE.	£	£
Expenses, including claims, etc. . .	412,815	Receipts other than interest, etc. .		331,534
Intermediate bonus .	86	Interest—Cross entries . . .	1,706	
Increase in liability .	3,924	Foreign interest not remitted . .	24,280	
Balance . . .	66,976	Untaxed interest .	1,123	
		Taxed interest already taken credit for in arriving at liability *re* annuities . . .	16,354	
		Taxed income .	108,804	
				152,267
	£483,801			£483,801

(*i*) 5 Tax Cas. 221.

See sec. 46 of the Income Tax Act, 1918, relating to non-liability on investments in War Stocks.

Since the passing of the Finance Act, 1914 (sec. 5) (now Rule 2 of Case 4 and Rule 3 of Case 5), the item of £24,280 for foreign interest not remitted to this country, would also be taxable, but see p. 250 as to income from the foreign life assurance fund.

The LORD PRESIDENT said that the Crown had always been allowed, when investments were held by a trading company, to tax the produce of the investments instead of the profits.

> "The Crown cannot charge the tax on both—that is to say, it cannot take a trading account which has money—its assets and investments—and first of all charge income tax upon the produce of investments, and then over and above, charge on the profits. It must elect between the two."

As regards the application under sec. 34, LORD MCLAREN, while admitting that he had no right to offer an opinion on the Commissioners' decision as there is no appeal therefrom by a Case Stated (see p. 334), said that—

> "If there were an appeal, I think a great deal might be said in support of it, because while the Commissioners were on the one hand insisting on the right of taxing investments as a separate thing, they on the other hand say it ought to be brought into the profit and loss account, and I think there is a great difficulty in seeing any logical connexion between these two positions of the Inland Revenue Authorities."

It is now enacted by Rule 15 to Cases 1 and 2 (*ante*), that in claims under Rule 13 (p. 371), or sec. 34 (p. 373), any income of an insurance company derived from the investment of its life assurance fund shall be treated as part of the profits of the life business.

Profits.—An Insurance Company carrying on Fire, Life and Marine Insurance was assessable on the combined result of the different branches, and in the case of the Life branch, the excess of the receipts of a particular year over the expenses of that year does not give the amount of profit, which has to be

ascertained by actuarial calculation. Rule 15 to Cases 1 and 2 (p. 248), however, provides that the life insurance business shall be assessed and treated separately.

It was laid down in *Scottish Union and National Insurance Company* v. *Smiles* (1889) (*k*)—

(1) That the interest of investments which has not suffered deduction of Income Tax at its source must be taken into account in ascertaining the assessable amount of profits and gains of the company.

(2) Seeing that fire insurance policies are contracts for one year only, premiums received for the year of assessment, or on an average of three years, deducting losses by fire during the same period and ordinary expenses, may be fairly taken as profits and gains of the company without taking into account or making any allowance for the balance of annual risks unexpired at the end of the financial year of the company. In *Sun Insurance Office* v. *Clark*, [1912] (*l*) a deduction may now be allowed for unexpired risks (see p. 256).

(3) That this rule is not applicable to the ascertainment of profits and gains upon the life business; that life policies are contracts of most variable endurance, and the premiums are in many cases not annual payments. The contract may endure for the policy-holder's life or for a certain number of years stated, or till the holder attains a certain age; and the company may be bound on the expiration of a fixed number of years, or on the attainment of a certain age by the policy-holder, either to pay a lump sum or an annuity for the remainder of the policy-holder's life. The premiums paid for such insurance may be paid all in one sum or by instalments within a fixed number of years, or annually during the holder's life, or during the subsistence of his policy. The premiums, therefore, do in no sense represent the annual profits and gains of the company. In like manner the amount of claims

(*k*) 26 Sc. L. R. 330; 16 R. 461; 2 Tax Cas. 551.

(*l*) A. C. 443; 81 L. J. K. B. 488; 106 L. T. 438; 28 T. L. R. 303; 56 S. J. 375; 6 Tax Cas. 59.

in one year arising on the death of persons insured, or as a deduction from the company's receipts for the year, cannot afford any criterion for the ascertainment of profits. A recently established company will receive a large amount of premiums and have few or no claims to meet. The profits and gains can be ascertained only by actuarial calculations, and this actuarial calculation may be obtained by taking the result of the quinquennial investigation prescribed by Statute or the periodical investigation in use in companies established before the Statute, or by an investigation covering the three years prescribed by Schedule D of the Income Tax Acts.

(4) Where the gain is made by the company (within the year of assessment or the three years prescribed by the Income Tax Acts, Schedule D), by realizing an investment at a larger price than was paid for it, the difference is to be reckoned among the profits and gains of the company.

Annuities.—It is provided by Rule 3 to Cases 1 and 2 of Schedule D (p. 83), that, in arriving at the assessable profits, no deduction is to be made for any "annual interest, or any annuity, or other annual payment payable out of the profits or gains," and by Rule 1 of Case 3 of Schedule D and Rule 19 of the General Rules to all Schedules, that annuities shall be assessed unless "payable out of profits or gains brought into charge" separately. In *Gresham Life Assurance Society* v. *Styles*, [1892] (*m*), the Society sold annuities and stipulated that its capital stock, funds, and property should be liable in respect of the payment of those annuities. It was decided in the House of Lords that the annuities were not payable *out* of the profits or gains, and that therefore they could be deducted in arriving at the amount of assessable profits under Case 1 (see p. 48 as to interpretation of Rule 3).

HALSBURY, L.C., stated that—

> "It would be an extraordinary thing to suggest that where a business consists of granting annuities it is to be taxed upon

(*m*) A. C. 309; 62 L. J. Q. B. 41; 67 L. T. 479; 56 J. P. 709; 41 W. R. 270; 3 Tax Cas. 185.

a different principle from any other commercial concern, and no one I suppose could doubt that in any other commercial concern, the cost of the thing sold to the trader is one of the expenses incident to the carrying on of the trade.

"If an annuity seller is to be treated differently from a seller of any ordinary article of commerce, coals or corn, or the like, one would have expected to find some words in the Statute rendering him obnoxious to a different system of taxation, and enforcing a different mode of ascertaining profits, whereas it seems to me that the application of the general words 'profits and gains,' or 'balance of profits and gains,' are equally applicable whatever the commercial concern carried on may be."

His Lordship said further that the whole point turned upon the words "out of the profits or gains," and that, as profits or gains "must be ascertained on ordinary principles of commercial trading," it must be assumed that the framers of the Act intended deduction of the cost of the article sold to the trader, which he in turn makes his profits by selling. "You can no more refuse to take that cost into your consideration when ascertaining the balance of profits and gains than you could the cost of the coals or the corn to the coal merchant and to the corn merchant in ascertaining what are the profits from his trade."

Mersey Loan Company v. *Wootten* was disapproved.

A difficulty arose with the above decision when the alternate method of assessment on interest and dividends was adopted instead of on profits. In *Edinburgh Life Assurance Company* v. *Lord Advocate*, [1910] (*n*), decided in the House of Lords, the company were not charged on profits, as the interest and dividends exceeded the profits. The company deducted tax when paying annuities and claimed to retain the tax as the annuities were paid out of taxed income. The particular funds were earmarked for payment of the annuities.

It was held that the retention was admissible as the annuities were to be taken as payable *out* of the taxed income, so far as it would cover the annuity, but that the tax on any

(*n*) A. C. 143; 79 L. J. P. C. 41; 101 L. T. 826; 26 T. L. R. 146; 54 Sol. Jo. 133, [1910] S. C. (H.L.) 13; 47 Sc. L. R. 94; 5 Tax Cas. 472.

excess of annuity over taxed income must be paid over to the Revenue.

The question turned on Rule 21 of the General Rules to all Schedules (p. 263), which enacts that a person paying an annuity charged under Schedule D, and which is *not* payable wholly out of profits or gains brought into charge, shall deduct tax and pay over to the Revenue the tax on the part not payable out of profits charged, and LORD ATKINSON held that where annuities are charged upon a tax-bearing fund sufficient to pay them, although not set apart for that purpose, they cannot be held to be "not payable" or "not wholly payable" out of profits brought into charge within Rule 21.

Rule 21 (3) enacts that the amount of annuities which an insurance company carrying on the business of granting annuities is entitled to treat as having been paid out of profits brought into charge shall not exceed the taxed income of its "annuity fund." The latter is defined in the Act as meaning, where an annuity fund is not kept separately from the life assurance fund, such part of the life assurance fund as represents the liability of the company under its annuity contracts as stated in its periodical returns to the Board of Trade under the Assurance Companies Act, 1909.

(See also, *Sugden* v. *Leeds Corporation*, [1913] p. 283.)

Unexpired Risks.—In a Fire Insurance business there is, at the time of preparation of accounts, an element of unexpired risk, as premiums are paid in advance and do not commence at a uniform time, therefore they cover periods extending past the date of the accounts. It is contended therefore that an allowance should be made in respect of a reserve carried forward for unexpired risks.

The question was raised in *Sun Insurance Office* v. *Clark*, [1912] H. L. (*o*). The company had carried forward 40 per cent. of the yearly premium income, and the Commissioners found as follows :—

(*o*) A. C. 443 ; 81 L. J. K. B. 488 ; 106 L. T. 438 ; 28 T. L. R. 303 ; 56 S. J. 375 ; 6 Tax Cas. 59.

(1) That the company is entitled to carry a percentage of fire premiums received in one year forward in reserve, in respect of unearned premiums which do not form part of the profits of the year.

(2) They found as a *fact* that, in the case of the Sun Fire Insurance Office, 40 per cent. was a reasonable and proper allowance. The Commissioners then directed that the assessment should be reduced accordingly.

The Crown did not question the correctness of the percentage, but only the principle of deduction. The assessment was based on the average of the three years ending 31st December, 1904, and during that period the provision of 40 per cent. increased by £56,334, and it was sought to deduct one-third thereof.

It was held that there was no rule of law as to the admissibility of a deduction for unexpired risks, but the question was one of fact, and on the facts found the allowance claimed was a proper one. LORD LOREBURN referred to the impracticability of ascertaining the actual profit and to the two following practicable methods of arriving at an estimated profit.

(*a*) Crediting merely the total premiums received and debiting the actual losses for three consecutive years.

(*b*) Carrying forward at the end of a year a percentage of the premium income in order to allow for unexpired risks.

> "There is no rule of law as to the proper way of making an estimate. There is no way of estimating, which is right or wrong in itself. It is a question of fact and figure whether the way of making the estimate in any case is the best way for that case. Experience seems to have satisfied Courts of Law for a considerable time that the method which I have described (*a*) is a useful working rule. But no one has said in this House that there is any constraint to accept it.
>
> "I am equally anxious that your Lordships should not be supposed to have laid down that the method applied by the Commissioners in the present case has any universal application. If the Crown wishes in any future instance to dispute it they can do so by evidence and it is not to be presumed that it is either right or wrong. A rule of thumb may be very desirable, but cannot be substituted for the only Rule of Law that I know of, viz.: that the true gains are to be ascertained as nearly as it can be done."

General Accident Fire and Life Assurance Corporation v. *McGowan* (*p*) was held to be no authority on the inadmissibility in *law* of the allowance claimed.

Bonuses.—Bonuses paid to life policy holders participating in "profits" are not deductible in arriving at assessable profits, nor are additions made to the life fund, as the first is a distribution of income and the second a transfer of income to capital. *Last* v. *London Assurance Corporation* (1885), H. L. (*q*).

The first part alone went to the House of Lords.

The bonuses arise under certain policies which provide for two-thirds of the gross profits on the participating policies being divided, in cash or otherwise, every five years, amongst the holders of such policies.

LORD FITZGERALD agreed that the premium in question does not the less form part of the annual income, because that a part of the gross profits realized may be subsequently allotted to policy holders.

See now sec. 16 (1) of Finance Act, 1923, which allows profits that belong or are allocated to or reserved or expended for policy holders or annuitants. Sums ceasing to be reserved, etc., become profits of the company for the year in which they so cease.

Mutual.—A mutual Life assurance company is not assessable on any surplus arising from the excess contributions of participating policy holders. The case of *New York Life Insurance Company* v. *Styles* (1889), H. L. (*r*), is of particular moment, not only to Insurance Companies, but to mutual concerns generally. If taxation were imposed it could be avoided by adjustment of contributions (see p. 160). The company had no *members* other than the holders of participating policies, to whom all the assets of the company belonged and who were liable for all losses. An actuarial valuation was made at the end of each year, and if the receipts exceeded the expenses and estimated liabilities, the surplus was divided amongst the participating policy holders in the shape of either

(*p*) [1908] A. C. 207; [1908] S. C. (H.L.) 24; 45 Sc. L. R. 681; 77 L. J. P. C. 38; 98 L. T. 734; 24 T. L. R. 533; 52 Sol. Jo. 455; 5 Tax Cas. 308.

(*q*) 10 App. Cas. 438; 55 L. J. Q. B. 92; 53 L. T. 634; 50 J. P. 116; 34 W. R. 233; 2 Tax Cas. 100.

(*r*) 14 App. Cas. 381; 59 L. J. Q. B. 291; 61 L. T. 201; 2 Tax Cas. 460.

a reduction in future premiums or of a reversionary addition to the amount of the policies. The divided surplus was partly excess premiums paid by participating policy holders over the cost of their insurance, and partly profits arising from non-participating policies, sale of life annuities, and other business with non-members.

In the House of Lords, opinion was divided, four Lords being in favour of the decision, and two against.

LORD WATSON pointed out that in *Last* v. *London Assurance Corporation* (p. 258), the Corporation was a proprietary one, "or, in other words, the Corporation and its shareholders formed a body quite distinct in personality and in interest from the insured," but that the *New York Life Assurance Company*, so far as its membership was concerned, was constituted upon the principles of mutual assurance.

> "When a number of individuals agree to contribute funds for a common purpose, such as the payment of annuities, or of capital sums, to some or all of them, on the occurrence of events certain or uncertain, and stipulate that their contributions, so far as not required for that purpose, shall be repaid to them, I cannot conceive why they should be regarded as traders, or why contributions returned to them should be regarded as profits. That consideration appears to me to dispose of the present case. In my opinion, a member of the appellant company when he pays a premium makes a rateable contribution to a common fund, in which he and his co-partners are jointly interested, and which is divisible among them at the times and under the conditions specified in their policies. He pays according to an estimate of the amount which will be required for the common benefit; if his contribution proves to be insufficient he must make good the deficiency; if it exceeds what is ultimately found to be requisite, the excess is returned to him. For these reasons I have come to the conclusion that the transactions of the appellant company, in so far as these relate to participating policies, do not constitute the carrying on of a trade within the meaning of the Income Tax Acts, and that the surplus funds returned or credited to its members are not profits."

LORD BRAMWELL cited the following example :—

> "They are a Corporation, but the case may be, as is admitted, dealt with as though they were an unincorporated association

of individuals. Take it that they were; take it that a half-dozen persons so associated themselves at the beginning of the year; they each put into a common purse £10 to be given to the executors of any one who dies, or divided, if more than one dies, among the executors of those having died. In fact, no one dies, and the money is returned or carried on for the next year. Is it possible to say that this is an association for the purpose of profit or that it has made any profit? "

LORD HERSCHELL said that if the members contribute more than is needed, and subsequent contributions are reduced by the excess, the latter cannot be considered as profit from a trade.

LORD MACNAGHTEN held that it was immaterial whether the surplus was applied as (*ante*) or paid back in cash, as in either case it was nothing more than the return of so much of the amount contributed as was in excess of the amount actually required. His Lordship could not regard that excess as gain or profit, and he could not see that persons contributing to a common fund in connexion with a scheme of mutual benefit could be said to make a profit when they have overcharged themselves.

LORD HALSBURY, who dissented from the decision, stated that his opinion would have differed had he been convinced that the members through *e.g.* miscalculation, had made excessive subscriptions and got back solely what they had oversubscribed, but he thought they got back more than that, as *e.g.* the enhanced value of the policy and their proportionate share of the good trading or fortunate adventure, which consisted of making contracts for payments of large sums which they had not been called upon to pay.

In the above case the company, which also issued policies to non-members, was held to be a mutual association so far as regards its transactions with non-members. In *Equitable Life Assurance Society of United States* v. *Bishop*, [1900] C. A. (*s*), the society had a London branch. A share capital of 100,000

(*s*) [1899] 2 Q. B. 439; 68 L. J. Q. B. 772; 47 W. R. 556; 80 L. T. 728; 15 T. L. R. 376; affirmed [1900] 1 Q. B. 177; 69 L. J. Q. B. 252; 48 W. R. 341; 81 L. T. 693; 16 T. L. R. 74; 4 Tax Cas. 147.

dollars invested in securities is required of every Life Insurance Society by the law of the State of New York. The shareholders were, under their Charter, entitled to a dividend not exceeding 7 per cent. per annum. The earnings of the society over the dividends, losses, and expenses were to be accumulated, and every five years each participating policy holder was to be credited with a portion of the available surplus. Non-participating as well as participating policies were issued, and other business, such as the granting of annuities, was undertaken. The profits from all sources went to form the surplus. Exemption was claimed in respect of the surplus arising in connexion with the participating policies. It was held that the whole profits of the branch were assessable.

Last v. *London Assurance Company* (p. 259) was held to be indistinguishable, and *New York Life Insurance Company* v. *Styles* (p. 258) distinguishable. It was pointed out by VAUGHAN WILLIAMS, L.J., that the company did not, in respect of the surplus arising in connexion with the participating policies, pay back all to the members of the Mutual Association, but paid it to a body outside the aggregate of the participating policy holders, in the shape of the 7 per cent. dividend to the shareholders.

(See p. 439.)

Investments.—See *Norwich Union Fire Insurance Company* v. *Magee*, [1896] (*t*), which decided that interest from American securities held by the Company formed part of the profit assessable under Case 1.

In *Liverpool and London and Globe Insurance Co.* v. *Bennett*, [1913] H. L. (*a*), the Company, which carried on fire and life Insurance business at home, also carried on a fire Insurance business abroad. The Company was registered in this country and had its head office here. The Memorandum provided for the investment of monies not immediately required, and, in

(*t*) 73 L. T. 733 ; 44 W. R. 384 ; 3 Tax Cas. 457.
(*a*) A. C. 610 ; 82 L. J. K. B. 1221 ; 109 L. T. 483 ; 29 T. L. R. 757 ; 57 S. J. 739 ; 20 Mans. 295 ; 6 Tax Cas. 327.

compliance with the laws of certain foreign States in which the Company carried on business, investments were made there. Other sums consisting of accumulated profits of the business were voluntarily invested there.

It was held that the interest from the investments formed part of the profits or gains of the business and was assessable under Case 1 (see p. 48) irrespective of whether it were retained abroad or remitted to this country, and of whether the investments were compulsory or not. It was further held that the Crown cannot be compelled to proceed under Case 4 or 5, if it prefers to proceed under Case 1.

INTEREST (Deduction of).

Payable out of Profits.—It is provided by Rule 3 (*b*) to Cases 1 and 2 of Schedule D that no deduction shall be made for :—

> "any annual interest, or any annuity, or other annual payment, **payable out of** the profits or gains."

This rule, in prohibiting deduction of *annual* interest, does not cover interest or *short loans* or *temporary advances* or *trade interests and discounts*, which are allowable.

The Rule refers to items payable *out* of profits. LORD WATSON, in *Gresham Life Assurance Society* v. *Styles*, [1892] H. L. (*c*), in defining the scope of Rule 3, said—

> "In order to bring annuities or other annual payments within the scope of the Rule, they must, in my opinion, either be directly charged upon profits, or be in themselves of such a character that they form a proper charge upon profits. An annuity to the widow of a deceased partner, interest on capital advanced by a partner, or upon money borrowed for the purposes of the business, are truly payable out of profits earned, and therefore ought not to be deducted in estimating the income yielded by the business."

By Rule 19 (1) of the General Rules to all Schedules, the above payments may not be separately assessed, but tax may

(*c*) A. C. 309 ; 62 L. J. Q. B. 41 ; 67 L. T. 479 ; 56 J. P. 709 ; 41 W. R. 270 ; 3 Tax Cas. 185.

be deducted on making the payments, so that the trader does not *bear* the tax.

Not payable out of Profits.—In order to maintain taxation at the source, Rule 21 of the General Rules enacts—

> (1) Upon payment of any interest of money, annuity, or other annual payment charged with Tax under Schedule D, or any royalty or other sum paid in respect of the user of a *patent*, **not payable, or not wholly payable, out of profits or gains brought into charge,** the person by or through whom such payment is made shall deduct thereout a sum representing the amount of tax thereon at the rate of tax in force at the time of the payment.
>
> (2) Any such person shall forthwith render an account to the Commissioners of Inland Revenue of the amount so deducted, or of the amount deducted out of so much of the interest, annuity, annual payment, royalty, or other sum respectively, as is not paid out of profits or gains brought into charge, as the case may be; and every such amount shall be a debt from him to the Crown and shall be recoverable as such; and the provisions contained in sec. 2 of the Stamp Duties Management Act, 1891, in relation to money in the hands of any person for stamp duty, shall apply to money deducted by any such person in respect of tax.

Paragraph 3 provides that in the case of an assurance company granting annuities, the annuities to be treated as having been paid out of profits brought into charge shall not exceed the amount of the taxed income of the annuity fund.

The above rule meets the case of interest paid out of capital during the construction of works. In *Lord Advocate* v. *Forth Bridge Railway Company*, [1890] (*d*), the company paid share and debenture interest during the construction, and it was held that the tax deducted by the company must be paid over to the Crown under sec. 24 (3) (now Rule 21). See p. 256.

If the assessable profit calculated on the average is not sufficient to cover the interest payable in the year of assessment, the balance is recoverable under Rule 21.

Short Loans.—See *Farmer* v. *Scottish North American Trust, Ltd.*, [1912] (*e*) (p. 144).

(*d*) 28 Sc. L. R. 576; 3 Tax Cas. 1.

(*e*) A. C. 118; 81 L. J. P. C. 81; 105 L. T. 833; 28 T. L. R. 142; 5 Tax Cas. 693.

In *De Peyer* v. *The King* (1909) (*f*), a loan was obtained from a bank in order to take up certain stock. Bank rate was charged, but a maximum of 4½ per cent. was fixed and the loan was at the borrower's option for two years. The loan was, however, paid off in less than a year, and the interest was paid out of income which had been taxed by deduction.

It was held that the loan was for a period less than a year, that the interest was not yearly interest, that tax could not be deducted, and that there was no claim against the Board of Inland Revenue for repayment.

See, however, sec. 36 of the Income Tax Act, 1918 (*post*).

Guaranteed Interest.—Interest paid under a guarantee during construction or during an unproductive stage is assessable.

In *Blake* v. *Imperial Brazilian Railway* (1884), C. A. (*g*), the railway company constructed a railway under a Government guarantee of 7 per cent. Capital was raised by Debentures at 5½ per cent. and the 7 per cent. was utilized for :—

(*a*) payment of debenture interest, and

(*b*) formation of a sinking fund to pay off debentures.

It was held that the whole sum paid under the guarantee was assessable as interest.

In *Nizam's Guaranteed State Railway Co.* v. *Wyatt* (1890) (*h*), the Company constructed a railway in Hyderabad, and the Nizam's Government guaranteed an annuity for twenty years of 5 per cent. on the issued share and debenture capital. The guaranteed annuity was applied in :—

(*a*) payment of interest on share capital at 5 per cent. and on debentures at 4 per cent. ;

(*b*) formation of a sinking fund for redemption of debentures out of the 1 per cent. excess of annuity over debenture interest paid.

It was contended that the sums placed to the sinking fund

(*f*) 100 L. T. 256.
(*g*) 1 T. L. R. 68 ; 2 Tax Cas. 58.
(*h*) 24 Q. B. D. 548 ; 59 L. J. Q. B. 430 ; 62 L. T. 765 ; 2 Tax Cas. 584.

was not assessable, but it was held, following *Blake* v. *Imperial Brazilian Railway* (*ante*), that the whole amount was assessable.

A condition was attached to the annuities that they should be repayable with interest out of future profits.

The question of guaranteed interest also arose in *Pretoria-Pietersburg Railway Co.* v. *Elwood* (1908) (*i*), where interest of 4 per cent. on the share capital was guaranteed by the South African Republic but, during the Boer War, the British military authorities took possession of the railway. The British Government subsequently declared its intention of expropriating the railway under the terms of the concession granted by the Republic, and it was agreed that all arrears of the guaranteed interest should be paid. It was decided that these arrears did not form a purchase price of the railway, but gross revenue which was assessable, and fell into the three years' average.

Bank Interest.—In *Anglo-Continental Guano Works* v. *Bell* (1894) (*k*), the Company, which was of German origin, had a London branch, and in order to pay cash for goods purchased, the branch obtained short loans from bankers and paid interest thereon. It was held that the interest was not a deduction.

The judgment in this case was not approved in *Farmer* v. *Scottish North American Trust* (p. 144), and LORD JOHNSTON pointed out that such interest was allowed in practice.

In practice, Bank interest payable was allowed, and sec. 22 of the Finance Act, 1915, introduced legal support.

Section 36 of the Income Tax Act, 1918, provides that :—

> (1) Where interest payable in the United Kingdom on an advance from a bank carrying on a *bonâ fide* banking business in the United Kingdom is paid to the bank without deduction of tax out of profits or gains brought into charge to tax, the person by whom the interest is paid shall be entitled, on proof of the facts to the satisfaction of the special commissioners, to repayment of tax on the amount of the interest.

(*i*) 98 L. T. 741 ; 6 Tax Cas. 508.
(*k*) 70 L. T. 670 ; 58 J. P. 383 ; 10 R. 161 ; 3 Tax Cas. 239.

(2) A like repayment shall on the like proof be made in the case of interest (not being yearly interest) payable in the United Kingdom on an advance from a person who in the opinion of the Commissioners of Inland Revenue is *bonâ fide* carrying on business as a member of a *stock exchange* in the United Kingdom, or from any person who in the opinion of the said Commissioners is *bonâ fide* carrying on the business of a *discount house* in the United Kingdom:

Provided that no repayment shall be made unless the Commissioners of Inland Revenue are satisfied that the interest has been or will be brought into account in the statement delivered or to be delivered for the purposes of Income Tax by the person making the advance.

See MUNICIPAL for interest, p. 283.

See BUILDING SOCIETY, p. 124.

See FINANCIAL COMPANIES, p. 198.

Deduction of Tax.—By Rule 19 of the General Rules to all Schedules, tax is deductible at the rate in force during the accrual of the payment, and by Rule 21 at the rate in force at the time of payment.

See p. 33 for deduction under Schedule A and p. 388 for deduction generally.

Contracting out.—Rule 23 provides that a refusal to allow deduction of tax shall be subject to penalties, and that any covenant to pay without deduction is void, as regards the particular covenant alone.

See *Blount* v. *Blount* (1915), at p. 272, where sec. 103 (now Rule 21) was held to be conclusive although the payments were covenanted to be made "free of income tax."

See as to basis of inclusion of Dividends, etc., in arriving at "total income" for abatement, etc., p. 351.

(See also p. 388.)

INTEREST (Assessment of).

Interest is a distinct subject-matter of assessment by No. 1 of Schedule D, which charges "all interest of money, annuities, and other annual profits or gains not charged under Schedule A, B, C or E and not specially exempted from tax."

Rule 1 of Case 3 of Schedule D (p. 64) charges, when the payments are not made out of profits brought into charge :—

Any interest of money, whether yearly or otherwise, or any annuities, or other annual payment, whether such payment is payable within or out of the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract, or whether the same is received and payable half-yearly or at any shorter or more distant periods.

Where the above payments are payable out of profits brought into charge the assessment is on the payer who is entitled to deduct tax when making the payment.

As regards loans secured on Rates, see MUNICIPAL, p. 283.

Yearly Interest.—An important case defining "yearly interest" is that of *Garston Overseers* v. *Carlisle* (1915) (*l*). The overseers kept a current account with a bank and paid rates into that account from time to time while payments were made out of the account, and they contended that under sec. 37 (1) (*b*) of the Income Tax Act, 1918 (p. 398), they were exempt, as being charitable trustees, in respect of "yearly interest," but it was advanced before the Commissioners that the procedure under sec. 105 (now sec. 37) was not by "appeal," and that, therefore, a case for the High Court could not be demanded. The case was, however, stated as raising the question of whether the interest was "yearly interest" or not.

ROWLATT, J., while refusing to express an opinion whether the overseers were trustees for charitable purposes or not, ruled that "yearly interest" under sec. 37 is the same as under Rule 19 of the General Rules (p. 392), and that the broad result of decisions on the latter section is that "yearly interest means, substantially, interest irrespective of the precise time in which it is collected, interest on sums which are outstanding by way of investment as opposed to short loans or as opposed to moneys presently payable and held over or

(*l*) 3 K. B. 381 ; 84 L. J. K. B. 2016 ; 13 L. G. R. 969 ; 139 L. T. 879.

anything of that kind." The bank allowed interest calculated on the fluctuating daily balances, etc. JUSTICE ROWLATT laid down that the overseers could not raise a capital fund and invest it at interest, that the balance is not even a short loan, but merely money at call and payable on demand, and that he was at a loss to see how, in the light of the authorities, he "could have any doubt whatever but that this is not yearly interest."

Annuities and Instalments.—In *East Indian Railway* v. *Secretary of State for India*, [1905] (*m*) the Secretary of State availed himself of his powers of purchasing a railway, the purchase price of which was in the form of an annuity payable half-yearly for seventy-three years. The annuity was £5 12*s.* 6*d.* for each £100 of capital stock commuted at £125 and was calculated on the basis of £5 7*s.* 6*d.*, being interest at £4 6*s.* per cent. on £125 and 5*s.* being the amount required to be set aside and invested in order to give, through a sinking fund, the capital sum of £125 at the expiration of the period of seventy-three years.

It was held that the annuity consisted partly of capital and partly of interest, that tax was only payable on the portion representing interest on unpaid capital, and that the capital portion must be taken as continually increasing and the interest portion as continually decreasing.

See also *Secretary of State for India* v. *Scoble and Others*, [1903] H. L. (*n*).

The case of *Delage* v. *Nugget Polish Co.* (1905) (*o*), raised the question of the assessability of certain payments. The company acquired the exclusive rights of manufacturing and selling articles made by a secret process, and the right was to be paid for in the shape of 8 per cent. on the gross receipts for forty years. The recipient of such payments was a foreigner resident abroad and the company deducted tax.

(*m*) 2 K. B. 413; 74 L. J. K. B. 779; 93 L. T. 220; 54 W. R. 4.
(*n*) A. C. 299; 72 L. J. K. B. 617; 89 L. T. 1; 51 W. R. 675; 4 Tax Cas. 618.
(*o*) 92 L. T. 682; 21 T. L. R. 454.

It was decided that the payment was an annuity or annual payment payable out of profits or gains and that the company could deduct tax. The case was distinguished from *Foley* v. *Fletcher* (p. 280) and *Secretary of State for India* v. *Scoble and Others* (p. 268) as there was no first ascertainment of a lump sum, and he held that sec. 40 of the 1853 Act (now Rule 19) (p. 267) is not limited to cases where annuities are paid out of profits or gains.

In *Chadwick* v. *Pearl Life Assurance Co.*, [1905] (*p*), Mr. JUSTICE WALTON stated that there is a difficulty in distinguishing between an agreement to pay a debt by instalments and an agreement for good consideration to make certain annual payments for a fixed number of years. The distinction depended upon whether the agreement involved an obligation to pay a fixed sum. In the above case a leaseholder assigned his interest to his sub-lessees in consideration of £1000 and also £1625 per annum, payable quarterly, for the residue of the term. The latter amount was the rent paid by the sub-lessees prior to the assignment. It was held that the payments were an annuity or other annual payment within sec. 40 of the 1853 Act and that, therefore, tax was deductible.

In *Walker & Co.* v. *I. R.* (1920), the company had a loan and paid interest plus part of the profits. It was held, for Excess Profits Duty purposes, that the latter was not interest.

Retiring Annuity.—It was decided in *Duncan's Exors.* v. *Farmer* (1909) (*q*), that an annuity paid to a Minister of the Church of Scotland on his retirement owing to ill-health and on his complete severance from the parish, was assessable under Case 6 of Schedule D (p. 66).

Bankruptcy.—In *re Cooper*, [1911] C. A. (*r*), a bankruptcy notice required payment of £3753 11*s.* 4*d.* made up of £3750 5*s.* 8*d.* judgment debt and £3 5*s.* 8*d.* interest at 4 per cent., and it was held that the claim for interest in full was in order as a judgment debt was not "yearly interest."

Bank Interest.—Bank Interest is assessable under Case 3 of Schedule D (p. 64) on the recipient, also "the profits on

(*p*) 2 K. B. 507; 74 L. J. K. B. 671; 93 L. T. 25; 54 W. R. 78; 21 T. L. R. 456.
(*q*) S. C. 1212; 46 Sc. L. R. 857; 5 Tax Cas. 417.
(*r*) 2 K. B. 550; 80 L. J. K. B. 990; 105 L. T. 273; 55 S. J. 554.

securities bearing interest payable out of the public Revenue other than such as are charged under Schedule C, and all discounts, the basis being the preceding year, which in practice is usually the calendar year.

With new deposits, assessments made for the first two years on the interest of the first year (see p. 65) are inequitable if the interest falls, but the Board has admitted assessment for the first three years on the actual interest of the current year, and now sec. 17 of the Finance Act, 1922, legalizes this (see p. 65).

Bank Interest can only be assessed on personal declaration, as the Revenue has no means of checking the correctness of the amount given by the recipient, but, on a death occurring, particulars of bank deposits appearing in the Inland Revenue affidavit leading to the grant of Probate are extracted, and back duty claimed for past years if it appears that interest has accrued in such years.

In *Glamorgan Quarter Sessions* v. *Wilson*, [1910] (*s*), unused payments in the shape of Compensation Levy (p. 115) were deposited at a bank, and it was held that the interest thereon was assessable on the Quarter Sessions. This case was followed in *Matthews* v. *Cork County Council*, [1910] (*t*), where the County Fund was deposited in the name of the County Treasurer, and it was held that the Council was liable to assessment on the interest.

Bank deposits for fixed periods at fixed rates are subject to deduction and are not assessable on recipient.

The taxed income from Investments of a business concern are added back in computing profits.

See REALIZATION OF INVESTMENTS, p. 149.

See INSURANCE COMPANIES, p. 247, and FINANCIAL COMPANIES, p. 198, and MUNICIPAL, p. 283.

See p. 265, for Interest payable.

See *Schulze* v. *Bensted* (1915) (*u*).

(*s*) 1 K. B. 725; 79 L. J. K. B. 454; 102 L. T. 500; 5 Tax Cas. 537.
(*t*) 2 I. R. 521; 5 Tax Cas. 545.
(*u*) 53 Sc. L. R. 156; 7 Tax Cas. 30.

IRON WORKS.

Iron Works are assessable under No. III. of Schedule A on the profits of the preceding year, but this does not apply to ironworks in which iron goods are manufactured, such as tube works, but refers to raw material.

LEGAL COSTS.

Legal costs in connexion with the recovery of trade debts and in defending existing trading rights, such as opposition to the passage of Parliamentary bills or provisional orders which may be derogatory to the particular trading interest, are allowed in practice.

Legal costs in connexion with "tied" houses are now admissible (see p. 107).

LEVELS.

Levels are assessable under No. III. of Schedule A.

LICENSING APPLICATION.

See BREWERIES, p. 123.

LOSS.

A loss of capital is not allowable, neither is a loss not connected with the trade, but a loss on one business may be set off against a loss on another business owned by the same person (Rule 13 to Cases 1 and 2 of Schedule D, see p. 371), and, on the accounts of the *current* year showing a loss, while the assessment on the average has shown a profit, the loss may be set off against the assessment or any other taxed income (Sec. 34 of the Income Tax Act, 1918. See p. 373).

Deduction is not allowable for a loss recoverable under an Insurance or contract of indemnity.

See FIRE, p. 203, and CAPITAL, p. 132.

MAINTENANCE.

No allowance is made for maintenance of the person assessable or of his family, except in regard to part of the rent of a

dwelling-house occupied partly for the purpose of trade. (See p. 83.)

MARRIED WOMEN.

The income of a married woman living with her husband is chargeable in the name of the husband (Rule 16 of the General Rules of all Schedules), and the incomes of a husband and wife are counted as one for Income Tax purposes, subject to the conditions (*post*). See p. 420.

Maintenance.—When the husband and wife are living apart the respective incomes are separately treated as if the persons were unmarried.

In *re Ward ; Harrison* v. *Ward* (1922) (*a*) the wife was living with her husband until her death in 1919. She had a large income under a settlement and the husband never applied for a separate assessment (Rule 17, *post*). After her death the Crown claimed larger sums from the husband for Income Tax and Super Tax in respect of income received by the wife during her life. PETERSON, J., held that the husband was liable under Rule 16 (*ante*) and that he could not claim to be indemnified for the tax from the wife's estate and that there was neither a right in equity.

In *Dayrell-Steyning* v. *Dayrell-Steyning* (1922), the Court dealt with the calculation of a husband's income in arriving at the amount of permanent maintenance to be allotted to a wife. When *e.g.* one-third of the husband's income is allotted to the wife, the amount allotted should be a sum (free from Income Tax and Super Tax) equal to one-third of the total income of the husband after deducting Income Tax and Super Tax.

The husband is entitled to deduct tax when paying alimony, but deduction must be made from the actual payments as it cannot be subsequently claimed. See *Shrewsbury* v. *Shrewsbury* (1906) (*b*), and *Barry* v. *Smart*, [1906] (*c*).

In *Blount* v. *Blount* (1916) (*d*) permanent maintenance was

(*a*) 126 L. T. 628. (*b*) 23 T. L. R. 100.
(*c*) 2 Ch. 358 ; 75 L. J. Ch. 676 ; 95 L. T. 165 ; 54 W. R. 621.
(*d*) 1 K. B. 230.

payable under order of the Court, and the terms of the order provided that payment should be at "the rate of £62 10*s.* per quarter (free of income-tax)." In the indenture consequent on the order the defendant covenanted to pay to the plaintiff "the quarterly sum of £62 10*s.* free of income tax." The payments were made without deduction of tax until March, 1915, when tax on the payment then due and on the three previous payments was deducted. It was held that Rule 23 of the General Rules to all Schedules was conclusive in its provision that a covenant to pay without deduction is void and that, therefore, tax was rightly deducted in respect of the March payment, but not in respect of the previous payments. See also *Ord* v. *Ord*. See p. 394, DEDUCTION OF TAX, for cases dealing with deduction of tax, and p. 415, SUPER TAX.

Joint Incomes.—It was provided by sec. 21 of the Income Tax Act, 1918, that when the total joint income of a husband and wife does not exceed £500, and part thereof is derived from a business carried on by the personal labour of the wife, a claim for exemption or abatement shall be dealt with "as if it were a claim in respect of the said profits of the wife, and a separate claim on the part of the husband in respect of the rest of the total income." Any income arising from the business of the wife, or from any source connected therewith is treated as part of the income of the wife. Sec. 21 is repealed by the Finance Act, 1920, for 1920-21 onwards, but stands for previous years within the three years' limit (p. 411).

Sec. 9 of the Finance Act, 1914, introduced the following amendments (now sec. 25 of the Finance Act, 1920), but it retained the aggregation of incomes for relief and Super Tax purposes :—

> (1) Where, on an application made for the purpose under the provisions of the Income Tax Acts, income tax for any year is assessable and chargeable on the incomes of the husband and wife respectively as if they were not married :—
>
> (*a*) All the provisions of the Income Tax Acts relating to claims for an allowance in respect of earned income and deductions from assessable income and for relief under

section thirty-two of the Income Tax Act, 1918, and the proof to be given with respect thereto, shall apply as if they were not married ; and

(*b*) The income of the husband and the wife shall be aggregated in estimating the amount to be repaid or allowed in respect of the allowances or deductions aforesaid, and for the purpose of the reduction of the rate of tax on the first two hundred and twenty-five pounds of the taxable income, and the total amount of any allowances or deductions given or made in respect of the incomes of husband and wife shall not exceed such an amount as would have been given on account of those allowances and deductions if such an application as aforesaid had not been made, and no reduction of the rate of tax shall be allowed in respect of more than two hundred and twenty-five pounds of the taxable income in all ; and

(*c*) The benefit of any such allowance or deduction and the reduction of the rate of tax on the first two hundred and twenty-five pounds of the taxable income may be given either by way of reduction of the amount of the tax to be paid, or by repayment of any excess of tax which has been paid, or by both of these means, as the case requires, and shall be given to the husband and the wife as regards the allowance in respect of earned income in proportion to the amounts of their respective earned incomes, and as regards deductions from assessable income and the reduction of the rate of tax, in proportion to the amounts of their respective assessable incomes :

Provided that in the case of relief given under section thirty-two of the Income Tax Act, 1918, the benefit of the relief shall be given to the husband or wife, as the case may be, by whom the payment is made, and in the case of a deduction claimed in respect of a child under sub-section (2) of the foregoing section of this Act relating to the deduction in respect of children, or in respect of any person under the foregoing section of this Act relating to the deduction in respect of dependent relatives shall be given to that one of the married persons by whom the child or relative is maintained ; and

(*d*) For the purpose of any of the above-mentioned allowances or deductions or reliefs a return may be made by the husband or the wife of the total income of the husband and wife, but if the Commissioners of Inland Revenue are not satisfied with the return they may obtain a return from the wife or husband, as the case may be.

(2) The Commissioners of Inland Revenue may require returns for the purposes of this section to be made at any time, and the provisions of the Income Tax Acts relating to penalties for

neglect or refusal to deliver or for delay in delivering true and correct statements of profits or gains shall, with the necessary modifications, apply in the case of the neglect or refusal to make or wilful delay in making any such return.

Rule 17 of the General Rules to all Schedules, as amended by sec. 26 of the Finance Act, 1919, provides that, on an application by a husband or wife, within six months before 6th July in any year of assessment, Income Tax shall be assessed, charged and recovered on the income of the husband and on the income of the wife as if they were not married.

Sec. 26 of the Finance Act, 1919, provides that, in the case of persons marrying during a year of assessment, the 6th July in the *following* year is substituted.

See *Bowers* v. *Harding* (1891) (p. 364).

Deduction.—In *Purdie* v. *Rex*, [1914] (*e*), a married woman living with her husband held shares in a company and tax was duly deducted. It was contended that tax was charged contrary to the requirement of sec. 45 of the 1842 Act (now Rule 16, *ante*) (p. 272) that the charge shall be in the name of the husband, but it was held that tax was not charged contrary to sec. 45 as the *charge* was upon the company.

MARKET TOLLS.

Market tolls are assessable under No. III. of Schedule A on the profits of the preceding year.

MARKET GARDENS.

See p. 44.

MILK SELLERS.

See p. 150.

MINERAL ROYALTIES.

Sec. 26 of the Finance Act, 1922, allows the lessor to claim repayment in respect of management expenses "wholly, exclusively and necessarily disbursed." Sec. 33 (2) of the Income Tax Act, 1918, applies to these claims (see p. 249).

(*e*) 3 K. B. 112; 83 L. J. K. B. 328; 30 T. L. R. 553.

MINES.

Mines are assessable under No. III. of Schedule A on the average profits of the five preceding years. No. III. covers "mines of coal, tin, lead, copper, mundic, iron, and other mines." The words "other mines" mean similar mines, in accordance with the legal interpretation of sweeping words. (See p. 319.)

Commencement of Business.—In *Cannop Coal Company* v. *I. R.* (1922), the Company commenced sinking shafts in 1906, when it was incorporated. The work of opening out was not completed until 1911. There was only a small yield of coal, prior to July, 1912, and the receipts were taken to capital up to April, 1912. In 1908 a drift was driven in a hill at some distance from the shafts to obtain coal for the sinking machinery. A greater quantity of coal than required was produced and quantities were sold from 1909. The Company contended that the business did not commence until July, 1912, or, alternately, April, 1912. The Court rejected this contention and treated the three last pre-war years for Excess Profits Duty purposes as being trading years for the pre-war standard.

(See p. 56 for treatment of No. III. of Schedule A in regard to the applicability of the Rules of Schedule D.)

Setting off Losses.—Rule 7 of No. III. provides that :—

> An adventurer so separately assessed and charged may set off against his profits from one or more of *such* concerns the amount of his loss sustained in any other *such* concern.
> (See Rule 13 of Cases 1 and 2 of Schedule D.)

Mines are assessable in the parish in which the shafts are put down.

Failing Mines.—Provision is made for failing Mines as follows :—

Rule 2 (a) of No. III. of Schedule A.—If any mine has, from some unavoidable cause, so decreased, and is so decreasing in annual value that an average of five years will not give a fair estimate thereof, the General Commissioners

of the division in which the mine is situate may, on proof thereof, compute the annual value on the actual amount of profits in the last preceding year, subject to such abatement on account of diminution of duty within the current year as is in this Act provided in other cases; and (*b*) if any such mine has, from some unavoidable cause, wholly failed, the commissioners may, on due proof thereof, discharge the assessment.

The above provision is sufficiently extensive to apply not only to worked-out mines, but to mines shut down owing to, *e.g.* seams being too thin to work profitably or too poor in quality. It may be contended that the above rule cannot operate as regards mines *failing*, unless the plant is sold off.

Deductions.—The assessment of mines is particularly inequitable owing to the Income Tax Acts making no allowance for sums placed to reserves for wasting assets. (See p. 134.) The working of mines extensively involves the element of wasting assets, and assume, *e.g.* a coal mine with a life of sixty years was opened and the following expenditure incurred:—

(1) Purchase price of seams *in situ* . . .	£100,000
(2) Shaft sinking	100,000
(3) Development expenses	100,000
	£300,000

The proprietors would obviously annually place sums (probably based on tonnage raised) to reserves for replacement of that expenditure, so that, on the colliery being worked out, the entire capital would still be intact.

The present system involves, by non-allowance of such payments, taxation of capital. (See p. 133.)

Conciliation Board Expenses.—Payments to Conciliation Boards are admissible as a deduction. *Lochgelly Iron and Coal Co., Ltd.* v. *Crawford*, [1913] (*f*).

Coal Owners' Association.—A deduction is not permitted *in law* for subscriptions (based on output) to a Coal Owners' Association, which subscriptions indemnify members against

(*f*) S. C. 810; 50 Sc. L. R. 597; 6 Tax Cas. 267.

stoppage caused by strikes, etc. *Rhymney Iron Co., Ltd.* v. *Fowler*, [1896] (*g*). In practice, however, the allowance is made. (See SUBSCRIPTIONS, p. 307.)

Dead Rents.—See p. 161 as to the non-allowance in respect of recoupment of dead rents.

Experiments.—A deduction is not allowable in respect of contributions to a levy for experimenting in coal dust, although such experiments were undertaken by a Coal Owners' Association at the request of the Government. *Lochgelly Iron and Coal Co., Ltd.* v. *Crawford*, [1913] (*h*).

Mining Association. — Subscriptions to the Mining Association of Great Britain are not admissible as a deduction. *Lochgelly Iron and Coal Co., Ltd.*, v. *Crawford*, [1913] (*i*).

Pit Sinking.—The cost of pit sinking cannot be deducted. In *Coltness Iron Co.* v. *Black* (1881), H. L. (*k*), LORD MURE said that a great deal of the sinking was through hard rock involving enormous expenditure, and that such expenditure could clearly only be treated as capital.

> "The case is obviously quite different from that which was put in argument in reference to stirring the soil for the purpose of getting at stone lying near the surface, in which practically the whole operation is that of cutting the stone, and where you have no expenditure which you can fairly distinguish from ordinary expenditure."

The LORD PRESIDENT in *Addie and Sons* v. *I. R.* (1875) (*l*), said—

> "The making of a new pit in a trade of this kind is in every sense of the term just an expenditure of capital. It is an investment of money, of capital, and must be placed to capital account in any properly kept books applicable to such a concern."

In *Bonner* v. *Basset Mines, Ltd.*, [1912] (*m*), the ore accessible

(*g*) 2 Q. B. 79; 65 L. J. Q. B. 524; 44 W. R. 651; 3 Tax Cas. 476.
(*h*) S. C. 810; 50 Sc. L. R. 597; 6 Tax Cas. 267.
(*i*) S. C. 810; 50 Sc. L. R. 597; 6 Tax Cas. 267.
(*k*) 6 App. Cas. 315; 51 L. J. Q. B. 626; 45 L. T. 145; 46 J. P. 20; 29 W. R. 717; 1 Tax Cas. 287.
(*l*) 12 Sc. L. R. 282; 2 R. 431; 1 Tax Cas. 1.
(*m*) 134 L. T. Jo. 180; 6 Tax Cas. 146.

from the original level had been practically worked out, and the company claimed deduction of the cost of deepening a main shaft. The Commissioners decided that the expenditure was a proper working cost and allowed it accordingly, but it was held in the Divisional Court that there was no evidence on which such opinion could be supported. (See p. 334 as to the conclusiveness of the Commissioners' findings on points of *fact*.)

The company sank the shaft, which was vertical, some fifty fathoms down, and such extension, together with the old portion, was used as a ventilating shaft, and as a centre from which levels and roads could be cut for the purpose of exploring and discovering lodes or pockets of ore at a level below those portions of the mine which had been wholly or partially exhausted, and also for the purpose of raising and lowering men and materials, but not for the purpose of following and winning ore from vertical lode.

The company had excavated the necessary ground and built a station at the foot of such shaft as extended, and had driven main cross-cut tunnels from the foot of such shaft. The new portion of the shaft was a permanent and lasting construction, timbered, built and equipped in the same manner as the upper portion of the shaft, and as an efficient extension thereof, being fitted with cage rods and also with pumping apparatus.

HORRIDGE, J., held that the Commissioners' finding that the expenditure was a proper working cost, being a finding of fact, was binding on him if there was any evidence before the Commissioners on which they could find that such an expenditure was a proper working cost. He decided that the expenditure was attributable to capital and that the old mine had become practically, if not wholly, exhausted, and the company, by lengthening this shaft to the considerable extent they did, were in effect opening up a new mine. *Morant* v. *Wheal Grenville Mining Co.* (*post*) was referred to.

Wagons.—See p. 242, for allowance in respect of wagons acquired on a hire-purchase agreement.

Subsidence.—A deduction is allowable, in practice, for damages paid on claims for subsidence of the surface.

Subscriptions.—(See *ante*, and p. 278.)

Cost Book Mines. — In *Morant* v. *Wheal Grenville Mining Co.*, [1894] (*n*), a call was made on the shareholders of a cost book mine for the sinking of a new shaft, and a claim was made to deduct the amount expended out of such call. The Commissioners allowed the claim, holding that "capital" did not exist in the case of a cost book mine.

It was held that the deduction could not be made.

WRIGHT, J., defined the admissibility of such expenses as being controlled by the question as to whether "the sinking of a new shaft such as this would be so frequently and ordinarily necessary as to be part of the ordinary working expense," and he said—

> "One can very well imagine in case of mines, where the minerals lay at shallow depths, and where it was necessary to open them out from time to time frequently by shallow shafts, that in those cases it might well be that the sinking of shafts would be properly treated as part of the ordinary working expenditure. On the other hand, you have a case such as I suppose the present case is, where a large area of ground has been worked from one shaft, and it is apprehended that it will soon become impossible to work any further from that shaft, and a new mine, so to speak, must be opened by a new shaft altogether."

Foreign Mines.—Foreign mines are assessable under Schedule D, not under No. III. of Schedule A. *Alianza Company* v. *Bell*, [1906] H. L. (*o*).

See also *Foley* v. *Fletcher* (1858) (*p*).

Compensation.—(See p. 143.)

MINORS.

The guardian of an infant is responsible for performing the requirements of the income tax law. Rule 4 of the general

(*n*) 71 L. T. 758; 3 Tax Cas. 298.

(*o*) A. C. 18; 75 L. J. K. B. 44; 93 L. T. 705; 54 W. R. 413; 22 T. L. R. 94; 5 Tax Cas. 172.

(*p*) 28 L. J. Ex. 100; 3 H. & N. 769; 7 W. R. 141.

Rules to all Schedules, provides that the guardian of an incapacitated person "having the direction, control, or management of the property or concern of any such person . . . shall be assessable and chargeable to tax in like manner and to the like amount as that person would be assessed and charged if he were not an incapacitated person."

By sec. 237 of the Income Tax Act, 1918, "incapacitated person" means any *infant*, married woman, lunatic, idiot, or insane person.

In *The King* v. *Income Tax Commissioners for Newmarket, Ex parte Huxley* (1916) (*q*), it was laid down that an infant is not personally chargeable, so that if he has no parent or guardian he escapes assessment. Sec. 41 (now Rule 4, *ante*) was held not to apply solely when there was a guardian in receipt of the profits and leaving an unrepresented infant to be within the general charging section relating to all "persons," but that it assumed an infant to be unassessable except through a guardian.

Sec. 161 of the Income Tax Act, 1918, provides that "if a person chargeable to tax is an infant . . . the parent, guardian or tutor of the infant shall be liable for the tax in default of payment by the infant." This was held to be merely machinery and not to introduce any liability of an infant not otherwise enacted.

Vested Interests.—In the case of property held in trust for a minor who has an *immediate* vested interest, exemption or relief may be allowed if the total income of the minor falls within the requisite limits (p. 341).

Vested interests payable in the future fall within the class of contingent interests (*post*).

Contingent Interests.—Where there is a contingent interest the total income may be calculated for exemption or relief, but the relief to be granted is confined to the actual expenditure on maintenance and education.

If the income alone is immediately vested in the minor, and the capital is contingent, the income is taken as belonging to the minor.

(*q*) 1 K. B. 788; 140 L. T. 156; 7 Tax Cas. 49.

Accumulated Income.—Section 25 of the Income Tax Act, 1918, provides that when, under a *will or settlement* income accumulates for the benefit of a person contingently on his attaining a specified age or marrying, that person can, within three years after the end of the year of assessment in which the contingency happens, claim repayment of any tax which would have been repayable had the income been absolutely his as it arose. Any relief previously given (*e.g.* for maintenance) has to be taken into account.

Sec. 30 (2) of the Finance Act, 1923, extends the three years to six years for contingencies happening in 1920–21 or subsequent years.

Foreign Possessions.—In *Drummond* v. *Collins*, [1915] H. L. (*r*), a foreigner, resident abroad, left his foreign property by will to trustees upon trust for the benefit of his deceased son's children, who were minors, for life and remainder to their issue. There was a provision that the income of the respective shares should be accumulated by the trustees and added to the capital until each child should attain the age of twenty-five, when such child was to become entitled to a portion of the accumulated fund. The trustees were empowered under the will to make such provision as they thought necessary or advisable for the education and maintenance of the children.

The trustees remitted to the mother of the children, who was their guardian and resident with them in England, from time to time, sums for maintenance and education.

It was held that such sums were assessable under Case 5 of Schedule D (p. 207) as "foreign possessions."

The MASTER OF THE ROLLS pointed out in the Court of Appeal that each grandchild has the following contingent interests :—

(1) If he attains twenty-five he will be entitled to a vested life interest in one-half of the income of his proportionate share, including accumulations up to that date.

(2) If he attains thirty-five he will be entitled to a vested life interest in the remaining half of the income of his proportionate share, augmented by accumulations.

(*r*) A. C. 1011 ; 59 S. J. 577 ; 84 L. J. K. B. 1690 ; 31 T. L. R. 482 ; 6 Tax Cas. 525.

(3) He will also be entitled, before attaining twenty-five, to such income as the trustees in the honest exercise of their discretion think necessary or advisable for his suitable maintenance and education.

LORD LOREBURN refused to accept the contentions, (*a*) that the payments were voluntary, (*b*) that voluntary payments could never be charged, and (*c*) that the mother could not be charged as she had no control of the foreign *property* under sec. 41 of the 1842 Act (now Rule 4 of the General Rules to all Schedules) (p. 222). As regards (*c*) it was held that the mother had charge of the *income*, which fact was sufficient.

Earned Income of Beneficiaries.—(See *Fry* v. *Shiel's Trustees* (1914), at p. 343.) *M'Dougall* v. *Smith* (1918), p. 343.

MORTGAGE COMPANIES.

See FINANCIAL COMPANIES, p. 198.

MUNICIPAL PROFITS.

See INTEREST, p. 262.
See WATERWORKS, p. 311.
See GASWORKS, p. 240.
See CEMETERIES, p. 150.
See SLAUGHTER-HOUSES, p. 313.

Retention of Tax.—An important case affecting Municipal Corporations was that of *Sugden* v. *Leeds Corporation*, [1913] H. L. (*s*). The Corporation carried on several undertakings, such as waterworks and gasworks, and the payment of interest on loans raised in respect of an individual concern was charged *primâ facie* on the income of that concern and the City Fund. The Corporation also had undertakings, in the capacity of an Urban Sanitary Authority, and in this class the payment of interest was charged on the income of the particular undertaking and the Consolidated Fund.

Assessments aggregating about £270,000 were made on the

(*s*) 108 L. T. 578; 77 J. P. 225; 57 Sol. Jo. 425; 29 T. L. R. 402; 11 L. G. R. 662; 6 Tax Cas. 211.

profits and rents of the various undertakings and hereditaments. The total interest paid amounted to about £285,000, and the Corporation deducted tax when paying that interest. The Corporation agreed that tax should not be retained by them on £15,000 but paid over to the Crown as not being paid *out of profits or gains brought into charge*, but the Crown contended that such an arrangement was insufficient, as the undertakings charged on the City Fund should be kept distinct from the undertakings charged on the Consolidated Fund, and the latter undertakings showed a deficiency of income of about £78,000 to meet the interest chargeable on those undertakings and the Consolidated Fund. Though the latter fund was chargeable as well as the undertakings, a rate was not struck, but an advance of about £78,000 was made from the City Fund. The Crown urged that the sum of £78,000 was not paid out of profits brought into charge, and that therefore under sec. 24 (3) of the Customs and Inland Revenue Act, 1888, the Corporation should account to the Revenue for the tax deducted on the £78,000.

It was held that the Corporation must account to the Crown for the portion of the interest paid in respect of loans raised for its Consolidated Fund undertakings, which is not met by the profits of those undertakings.

The LORD CHANCELLOR stated that the question of what would be the case if there were default in payment of interest, and a question of ranking occurred, was one which the Court was not called upon to determine, and that—

> "In the meantime and pending that event I think that no other income than the profits of the several undertakings and properties is operatively and effectively charged with payment of the interest on the various loans."

His Lordship defined the words "not payable out of" in sec. 24 (3) of the Customs and Inland Revenue Act, 1888 (now Rule 21 of the General Rules to all Schedules (p. 391)), as meaning "not legally payable out of," that is which cannot *lawfully* be paid out of the "taxed fund." If the

interest or the annuities were in fact, but against the law, paid out of the "taxed fund," then, though the tax should be deducted from the creditor, it could not be retained by the debtor.

Where interest is legally payable out of either "taxed" or "untaxed" funds, the manner in which the payments have been treated for book-keeping purposes is immaterial, as the payments will be taken as being made out of the "taxed" fund so far as the latter is sufficient.

Lord Atkinson agreed that the company could not retain tax on the £78,000, as it was not legally payable out of the particular fund out of which it had in fact been paid. The Corporation had not power to devote the surplus from their municipal undertakings to meet the deficit on their sanitary undertakings.

His Lordship said that the right of retention depended upon affirmative answers being given to both the following questions:—

(1) Have the interest and the annuities been, in fact, paid, or must they in the circumstances of the case be taken to have been, in fact, paid out of profits or gains brought into charge, *i.e.* out of the so-called "taxed fund"?

(2) Was it lawful to pay them out of the fund?

Set-off.—In practice the following conditions apply to the setting of profits of undertakings against the interest of the fund to which they belong:—

(1) The separate funds of a Local Authority are to be treated as separate and distinct legal entities.

(2) Each fund is to be assessed according to the rules for the assessment of persons.

(3) Payments or transfers from one fund to another are to be treated as real transactions, and not as mere book entries.

(4) One fund can trade with another, and can borrow from or lend to another at interest.

(5) Payments such as rent, ground rent, and annual interest (including interest paid by one fund to the sinking fund of another) made by one fund to another under legal obligation, are to be regarded as taxed income in the hands of the receiving

fund, provided that the income of the paying fund out of which they are made has suffered tax.

(6) The number of funds to be dealt with separately for Income-tax purposes is as a rule to be determined by the number of rates levied or leviable. Occasionally, however, a separate fund may exist without any rate, *e.g.* a Borough fund without a Borough rate. In certain circumstances the revenues of specified areas in the same borough or district enjoying differential rating are also to be treated as separate funds, but each case will be determined by the Local Acts or Provisional Orders relating thereto.

(7) The amount of assessable profit derived by a fund from any trading concern which it carries on is to be computed after (*a*) excluding the profit on supplies to non-trading concerns *belonging to the same fund*, (*b*) crediting sales to trading concerns of the same fund if a corresponding debit has been made in such other trading concerns, and (*c*) crediting all sales made to any other fund.

8 (i) Where the supplies referred to in par. 7 (*a*) (hereinafter referred to as public supplies) *are charged for on the same scale as supplies to private consumers*, the profit on the public supplies is to be arrived at as follows :—

(A) Deduct from the total cost of production (*i.e.* manufacture, distribution, and administration) all expenses (*e.g.* cost of repairs to street lamps and bad debts) relating solely either to (1) public supplies or (2) private supplies. Then take as the general cost of public supplies a proportion of the balance so obtained, such proportion being in the ratio borne by the income from (1) public supplies to the total trading income (including income from residuals, but excluding income from specific public services, *e.g.* income from repairs to street lamps).

(B) The profits on public supplies to be excluded from assessment is therefore the excess of the income from public supplies over (1) the costs specifically applicable to such supplies, added to (2) the cost ascertained as in (*a*).

EXAMPLE.

GAS UNDERTAKING (DISTRICT FUND).

EXPENDITURE.	£	INCOME.	£
Manufacture . .	26,000	Private supplies . .	50,000
Distribution . .	10,000	PUBLIC SUPPLIES :—	
Administration (including £100 street lamplighters) . .	4,000	Non-industrials District fund (*t*) .	2,000
Bad debts . .	100	Non-industrials Borough fund . .	2,000
Repairs to street lamps	200	Industrial concerns .	3,000
		Residuals . . .	4,000
		Repairs to street lamps	200
	£40,300		
Profit to net revenue account . . .	20,900		
Total . .	£61,200	Total .	£61,200

TOTAL EXPENSES			£40,300
Deduct :—			
Repairs to street lamps	200		
Bad debts	100		
Wages : Lamplighters	100		
	—		400
			£39,900

COST OF PUBLIC SUPPLIES.

Total trading income.		Income from non-industrials of District fund.		Total cost as above.		
£61,000	:	£2,000	: :	£39,900	:	£1,308

Profit to be excluded from assessment is therefore £2,000—(£1,308 + £100 wages) = £592.

INCOME-TAX ASSESSMENT.

Profit per account		£20,900
LESS : Sch. A. assessment on gas office . .	£40	
,, Bank interest paid, net revenue account .	700	
,, Public works loan commissioners : Interest	1,000	
	—	1,740
		£19,160
LESS :—Profit on public supplies as above . .		592
		£18,568

(*t*) Including public lighting, £1500.

(c) In the case of electrical undertakings, the profit on public supplies may be calculated by reference to the proportion of units or quantity supplied instead of by reference to the proportion of actual income.

No objection is to be raised to a division of the variable or works expenses according to the units supplied, and the non-variable or standing expenses according to the kilowatt capacity.

8 (ii) Where the scale of charges for public and private supplies differs, the amount that would have been received for public supplies within the area of the authority, had the scale been uniform, is to be substituted for the income referred to in 8 (i) (*a*) above, when ascertaining the proportion of general cost of public supplies.

In this case, however, the profit on public supplies is obviously the excess of the actual income as credited in the accounts over the cost so calculated. If this cost exceeds the actual income, and there is therefore a loss on public supplies, such loss must be added in arriving at the assessable profits.

8 (iii) Where only the actual cost of such public supplies is charged, the profit as shown by the accounts will indicate the correct liability, and no adjustment as otherwise provided by this clause will be necessary.

(9) All debits and credits of bank interest are to be regarded as actual expenditure and income, and not as mere book-keeping entries. In arriving at the Income-tax liability, all items appearing in the accounts of non-trading concerns of the same fund (both debits and credits) are to be pooled, and the assessment made under Case 3, Schedule " D," on the credit balance, if any.

(10) As the nominal profit on supplies to non-trading concerns of the same fund is to be excluded from assessment (see No. 7) the wear and tear allowance is to be restricted to the proportion applicable to the profits charged.

(11) Any restriction of the depreciation allowance as

indicated in No. 10 is to be made in the ratio of the profit on public supplies to the total profit of the undertaking.

EXAMPLE.

If desired by the Authority the depreciation allowance may be apportioned on the same basis as the expenses of the undertaking are apportioned, *e.g.* in an electrical undertaking on the basis of the units sold in the last year in the average, and that the total depreciation claimed and normally allowable is on £20,000 at 5% = £1,000. The amount to be actually allowed will be £969, arrived at as follows :—

Total profit.		Profit assessed.		Total depreciation.		
£19,160	:	£18,568	::	£1,000	:	£969

(12) Composition for stamp duty and other analogous charges are not admissible as deductions in computing Income-tax liability. The cost of management of stock is an admissible charge.

(13) Public baths and wash-houses established under local or public General Acts are not to be considered to be trading concerns, but one-half of the net Schedule "A" assessment (after deducting any ground rent, lease rent, quit rent, etc.), shall be admissible as a set-off, provided that this shall not apply to buildings provided mainly for medicinal or similar baths.

(14) Slaughter-houses are to be considered to be trading concerns, unless they are debarred from profit-earning by the local Act or other authority under which they are carried on.

(15) Contributions to insurance funds of the local authority are not to be allowed as expenses in arriving at the liability of industrial undertakings.

The actual disbursements out of such funds are to be allowed against the particular undertakings in respect of which such disbursements have been made, as if the said disbursements had actually been charged against the particular undertakings.

(16) In computing the liability of local authorities in respect of interest paid subject to deduction of tax, the question of the

extent to which such interest is paid out of taxed profits and gains is to be governed by the provisions of the following paragraphs.

(17) The interest payable by each separate fund (see paragraph 5) is to be separately dealt with. The taxed income of each fund available as set-off is to be against the interest liability of that fund.

Any excess is not to be set against the interest liability another fund, except where the profits may be with equal legality applied to such other fund, nor is any excess to be carried forward to a succeeding year.

(18) The set-off to be allowed in respect of property owned and let, is not to exceed the net Schedule "A" assessment, less charges (ground or lease rent), but where any property is assessed in excess of the rent received only the rent less the charges is to be allowed.

(19) No set-off is in law due in respect of the net Schedule "A" assessment on such property as a Town Hall. As a concession, however, if such properties produce incidental income from casual lettings, a proportion of the net Schedule "A" assessment is to be admitted as a set-off, such proportion to be approximately the same as that borne by the total lettings to the sum of the net Schedule "A" assessment, plus the running expenses (including repairs and general establishment charges) of the premises, *e.g.* :—

Schedule "A" net	£400
Total expenses	800
Total	£1,200

Lettings, £300. Allowance, £100.

(20) The Schedule "A" assessment on sewers and sewage farms if not let to tenants are not available as set-offs, except in respect of any taxed amounts received in respect of easements, etc., but an allowance is to be made to the extent of the Schedule "B" assessments on sewage farms.

(21) The Schedule "A" assessments on the properties of trading concerns are to be added to the Schedule "D" profit in arriving at the amount available as a set-off. Where there is no Schedule "D" profit, the amount of the Schedule "A" assessment upon which tax has been paid is to be treated as the profit of the year from which, subject to the restrictions, the set-off is to be calculated.

(22) An Authority adopting Part I. of the "Housing of the Working Classes Act, 1890 (Dwelling house improvement fund)," is authorized to transfer in aid of rates only the balance of profit after meeting all expenditure under the Act. If, therefore, the assessed income of the dwelling-house improvement fund is in excess of the expenditure (including expenditure for interest and sinking fund or loan repayment, but excluding expenditure already allowed in arriving at the assessed income) the excess may be allowed as a set-off against interest paid out of the local rate; subject to any special provision there may be in any local Act.

No restriction of set-off is to be made in connection with schemes under Part III. of the above Act, except in the following cases:—

(*a*) *Rural Sanitary Authority.*—If, on the application of the rural sanitary authority, the Local Government Board declare that the expenses are to be levied as *special* expenses charged on specified contributory places, each such scheme is to be regarded as a separate fund.

(*b*) *Rural Sanitary Authority.*—Similarly if the Local Government Board declare that the expenses are to be levied as *general* expenses charged on specified contributory places, any balance available for set-off is to be regarded as available for payment of interest payable on behalf of the specified contributory place only.

(23) Small Holdings and Allotments Act, 1908. Any surplus on this account can only be applied in relief of rates with the sanction of the Local Government Board. Until this sanction is obtained, no set-off is allowable.

(24) Loans funds are not to be regarded as separate funds, being merely aggregations of the funded debts of the various separate funds, and any interest earned by the moneys standing in the loans funds shall be allowed as set-offs in the funds to which the said moneys belong, except where the interest is required to be retained in the fund as a specific part of the sinking fund.

(25) The profits available for set-off are not to include any profits specifically earmarked to other purposes than the relief of rates, *e.g.* the taxed income of an endowment for the upkeep of a public clock or of a public park is not available as a set-off.

(26) In order to ascertain whether the profits of trading concerns are available as set-offs, it is necessary to examine the relative Local Acts or Local Government Board Orders, not only in the case of Cities and Boroughs, but also in the case of Urban District Councils.

(27) Any profits assessed which are required by statute to be retained in the accounts of an undertaking in reduction of future charges, or for specified purposes, other than the relief of rates, or any sums (*e.g.* ground rent) from which the Authority has the right to deduct tax, are necessarily not available as set-offs (see Example I. below). Any sum available as a set-off is, however, not to be diminished by the amount of expenditure not admissible as a deduction for Income-tax purposes, and therefore disallowed in arriving at the adjusted profits for Income-tax purposes (see Example II. below).

EXAMPLE I.

GAS WORKS.

Profit as assessed to Income-tax . .		£12,000
Interest	£4,000	
Sinking fund	3,000	
Ground rent paid	200	
		7,200
		£4,800

The Local Act, after providing that the revenue of the undertaking shall be applied to maintenance, working expenses, interest and sinking fund or repayments, enacts that one-half of the surplus shall be retained in the undertaking, and applied to the reduction of consumers' charges, and the other half be carried to the District fund. The set-off will be £2,400.

If the Act provided that the whole of the surplus should be retained and applied towards the reduction of consumers' charges, the set-off would be Nil.

EXAMPLE II.

Profits as per account		£10,000
ADD : Income-tax debited in account		500
Add cost of raising new loan		100
Profits as assessed to Income-tax		£10,600
LESS : Interest	£4,000	
„ Sinking fund	3,000	
		7,000
Set-off		£3,600

i.e., the set-off is not to be reduced by the Income-tax, £500, and the cost of raising new loan, £100.

(28) In calculating the profits available as set-off, there shall be deducted from gross profits either the wear and tear allowance of the year, or the compulsory sinking fund instalment (together with any other sums compulsorily applied to the redemption of loans) whichever is the greater, and this arrangement implies that for practical purposes the wear and tear allowance and the compulsory sinking fund instalment, etc., are to be treated as equivalent one to the other.

Where, instead of, or in addition to, creating sinking funds, the method of providing for loan redemption is by actual loan repayments each year (*e.g.* in the case of loans from the Public Works Loan Commissioners), the sums so repaid are to be treated in the same way as sinking fund instalments, and are to be included in the deduction from gross profits in arriving at the profits available as set-off.

(29) When calculating the profits available for set-off the amount of the sinking fund instalment and/or loan repayments which fall to be deducted from the adjusted profits of the year as ascertained for Income-tax purposes is to be reduced by the amount deducted from the gross profits in respect of profits on public supplies (see paragraphs 7 and 8) (*i.e.* the profits on public supplies though not assessed, are to be regarded as applicable to the payment of the sinking fund or repayments), but if the balance of the sinking fund instalment, etc., after such deduction is less than the wear and tear allowance of the year, the latter becomes the amount to be considered in computing the profits available for set-off.

(30) In calculating the set-off, the amount of wear and tear allowance to be considered is the normal allowance for the year of which the profits are taken for the purpose of set-off as restricted by paragraph 10 ; *i.e.* for 1915–16 the allowance is that due for the Income-tax year 1915–16, whether actually fully allowed or not, although the profits from which the set-off is calculated will be those coming into assessment for 1916–17.

(31) The depreciation allowance for tramways under the scheme approved by the Board of Inland Revenue, includes both wear and tear allowance, and also a sum to represent repairs of track, based on the average repairs of the three (*a*) years immediately preceding the initiation of the scheme or subsequent quinquennial re-adjustment. In consideration of this, the actual expenditure on repairs of track charged in the accounts for the year, is included in the adjusted profits for Income-tax assessment. In other words, the depreciation allowance includes both an allowance for wear and tear, and an average sum for repairs of track, but against this the adjusted profit of each year is inflated by the amount of the expenditure on repairs of track included in the accounts of such year. Accordingly, when comparing sinking fund instalment, etc., with depreciation allowance for the purpose of seeing which

(*a*) A period of five years may be adopted, if preferred, but the same period that is selected must be used in all subsequent adjustments.

amount has to be deducted from gross profits in order to arrive at the profits available for set-off, the amount to be taken as the depreciation allowance is the gross amount allowed, less the sum included therein for average repairs of track; and the gross profit to be considered is the total adjusted profit, less the amount included therein for repairs of track in the year.

EXAMPLE I.

Assume a case in which the sinking fund is greater than the wear and tear allowance only, but less than the wear and tear allowance plus repairs of track.

The profits of the year are	£10,000
Repairs of track	500
Finally adjusted profits under scheme	10,500
Loan interest paid	5,000
Sinking fund instalment	4,300
Wear and tear allowance (namely, £4,000 wear and tear, and £550 average repairs of track)	4,550

SET-OFF CALCULATION.

Profits	£10,000
Less: Interest and sinking fund	9,300
Profit available as set-off	£700

EXAMPLE II.

Where the sinking fund is less than the wear and tear allowance. The conditions are the same as in Example I., except that the sinking fund is assumed to be £3,000 only. The calculation would then be :—

Profits	£10,000
Less: Interest and wear and tear	9,000
Profit available as set-off	£1,000

EXAMPLE III.

Where the sinking fund is greater than the wear and tear allowance plus repairs of track. The conditions are the same as in Example I., except that the sinking fund instalment is £5,000 :—

SET-OFF CALCULATION.

Profits	£10,000
Less: Interest and sinking fund	10,000
Profits available as set-off	Nil.

Where no depreciation is allowed as in the case of gas works and waterworks, the sum available as a set-off would be arrived at as follows :—

	£	£
Profits of the year		10,000
Sinking fund contribution	4,000	
LESS : renewals of plant and machinery deducted in arriving at profits . .	500	
	3,500	
Interest	1,000	4,500
Profits available as set-off		£5,500

(32) The profits of trading undertakings available for set-off are to be calculated *with regard to the actual profits of the year of assessment as adjusted for Income-tax purposes*, provided that where the accounts of undertakings are made up to the 31st December, or the 31st March, or as in Scotland, to 15th May in the following year of assessment, the year ending on those dates shall for this purpose be taken as representing the year of assessment.

The basis of allowance of the actual profits of the year of assessment applies to all income not taxed at the source, *e.g.* to bank interest and interest on Government Loans, as well as to profits of trading undertakings.

Cemeteries :—(*a*) *Cemeteries carried on by Boroughs under the Burial Acts, 1852 to 1900.* The strictly legal interpretation of Section 22 of the Burial Act, 1852, is that no set-off is permissible until all monies borrowed for burial ground purposes have been repaid. A concession is made to Boroughs by allowing a set-off after deducting the sinking fund or repayment instalment. No set-off is allowed to authorities, other than Boroughs, in respect of cemeteries carried on under the Burial Acts, 1852 to 1900, except where there are special Acts warranting allowances.

(*b*) *Cemeteries not under the Burial Acts, 1852 to 1900, but under the Public Health Act, 1875, Section 141 and the Public Health (Interments) Act, 1879.* Unless there is a

restriction in the Local Government Board Provisional Order (if any), the profits are regarded as belonging to the District Fund and available for set-off purposes without any restriction for sinking fund or loan repayments.

Set-off; Waterworks and other undertakings carried on by local authorities under the Public Health Act, 1875.

Unless the Local Government Board Provisional Order or legislation referred to in the loan sanction, gives information showing that the application of the income is *specifically* restricted, the whole profits are admitted as a set-off in computing the liability in respect of interest paid out of the fund to which the undertaking belongs (generally the District Fund).

There is nothing in the Public Health Act, 1875, restricting the application of the profits of an undertaking carried on under its authority.

Interest on Government Securities paid without deduction of tax, 5% War Loan, etc.

Income from this source is assessable on the basis of the amount received in the year preceding the year of assessment, subject to a deduction for bank, etc. interest paid in full. In dealing with the income the principle of separate funds must be observed, and the deduction for bank and similar interest restricted accordingly.

In *re Birmingham Corporation* (1875) (*b*), the Corporation was assessed for profits of Market Hall, fish market, vaults and meat market, and it was held to be inadmissible to set off against profits on those concerns, losses sustained on baths, etc.

In *A. G.* v. *Scott* (1873) (*c*), the Corporation of the City of London was held to be liable to assessment on the profits of market tolls, and corn and fruit metages, brokers' rents, mayor's court fees, etc., without reference to the purposes to which they were applied, and that the proper principle upon which the assessment should be made is to take each item or head of income separately, and to assess the income tax upon

(*b*) 1 Tax Cas. 26.
(*c*) 28 L. T. 302; 21 W. R. 265; 1 Tax Cas. 55.

the net produce of such item, after deducting from the gross receipts the expenses incurred in earning and collecting the same.

Set-off for Waterworks.—In *Wakefield Rural District Council* v. *Hall*, [1912] C. A. (*d*), the appellant supplied water to several contributory parishes in their district. Separate accounts were legally required to be kept for each parish, and there was no power in the Council to divert the profits of one parish for the benefit of another parish. It was intended to make the receipts from water rents (which were only paid by consumers) cover, as nearly as possible, the cost, thus no profits were sought, but a deficiency was met by a special rate upon all ratepayers in the particular parish, any surplus being carried forward to meet the following year's expense.

In four parishes profits were made, and in three losses, and it was held that the supply to each of the parishes was a separate concern and that the Corporation was assessable in respect of such profits, and that it was not permissible to set off the said losses against the profits. It was held, further, that waterworks did not come within sec. 101 of the 1842 Act (see p. 60), which allowed a loss on an undertaking assessable under Schedule D to be set off against the profits of another undertaking under Schedule D and in the same ownership, and which was not a *rule* of Schedule D, but the Income Tax Act, 1918, reproduces sec. 101 as *Rule* 13 of Cases 1 and 2 of Schedule D, and Rule 8 of No. III. of Schedule A provides that concerns in No. III. shall be charged "according to the *rules* applicable to Schedule D, so far as the same are consistent with the rules of this Number."

See also *Mullingar Rural District Council* v. *Rowles*, [1913](*e*), in which the Council were restricted to supplying water in their district, and the profit made was held to be assessable.

In *Inland Revenue* v. *Glasgow Corporation Water Commissioners* (1875) (*f*) it was held that a compulsory rate did not

(*d*) 2 K. B. 265; 3 K. B. 328; 81 L. J. K. B. 1201; 107 L. T. 138; 28 T. L. R. 589; 76 J. P. 437; 10 L. G. R. 1002; 6 Tax Cas. 181.
(*e*) 2 I. R. 44; 6 Tax Cas. 85.
(*f*) 12 Sc. L. R. 466; 2 R. 708; 1 Tax Cas. 28.

give assessable profit, but in *Glasgow Water Commissioners* v. *Miller* (1886) (*g*) the Corporation supplied water outside the limits of compulsory supply, and also for trade purposes within those limits, and were held to be assessable thereon.

See also *Dublin Corporation* v. *McAdam* (1887) (*h*), and *Allan* v. *Hamilton Waterworks Commissioners* (1887) (*i*).

In *Harris* v. *Corporation of Irvine*, [1900] (*k*) the Corporation supplied water to other authorities in return for annual sums raised by compulsory assessments within the areas of the latter. The waterworks produced a surplus, which was partly carried over and partly applied to a sinking fund for redemption of debt. The surplus attributable to the above sums was held to be assessable profit.

Interest. — Municipal Corporations are chargeable on interest paid on loans, the assessment being based on the amounts payable in the year of assessment. On paying the interest, tax is deducted and retained by the Corporation, Rule 6 of the Miscellaneous Rules of Schedule D ; Rule 1 of Case 3 of Schedule D and Rule 19 of the General Rules to all Schedules. (See p. 262 as to Deduction.)

In *Mayor, etc., of Gateshead* v. *Lumsden*, [1914] C. A. (*l*), the Corporation paved certain streets, and from time to time apportioned the expenses thereof among the owners of premises having frontages thereto. The defendant was allowed time for payment of his apportionment, interest being charged at the rate of 5 per cent. per annum, and he paid sums at irregular intervals which the Corporation credited in the first place to interest due and in the second place to payment of principal. There was no evidence that the Corporation made a practice of allowing the expenses to remain unpaid as a means of investing capital. Upon paying the final amount due for principal and interest, the defendant claimed to deduct tax upon the

(*g*) 13 R. 489 ; 23 Sc. L. R. 285 ; 2 Tax Cas. 131.
(*h*) 20 L. R. Ir. 497 ; 36 W. R. 98 ; 2 Tax Cas. 387.
(*i*) 14 R. 485 ; 24 Sc. L. R. 360 ; 51 J. P. 727 ; 2 Tax Cas. 194
(*k*) 2 F. 1080 ; 37 Sc. L. R. 799 ; 4 Tax Cas. 221.
(*l*) 2 K. B. 883

amount due for interest as "yearly interest of money" under sec. 40 of the 1853 Act (now Rule 19, *ante*).

It was held that the interest was not within the said words, and that therefore deduction of tax could not be made.

Sec. 102 (now Rule 6, *ante*) was held in *Aberdeen Commissioners of Supply* v. *Russell* (1890) (*m*) to apply to interest paid on loans raised on the security of the rates, for the erection of municipal buildings. (See p. 266.)

Retention.—In *A.-G.* v. *London County Council*, [1907] H. L. (*n*) the Council claimed to retain tax deducted on payment of loan interest, equivalent to tax paid under Schedule A on property owned and occupied by them and which was part security for the loan, but it was held that the council could only retain tax on interest paid out of taxed sources, and could not make a set-off in respect of tax upon unproductive property.

See also *London County Council* v. *A.-G.*, [1901] H. L. (*o*).

Sinking Fund.—It was held in *Mersey Docks* v. *Lucas* (1883), H. L. (*p*), that a surplus arising from dock dues which was applied to a sinking fund for extinguishing debts was assessable, the destination of a profit being irrelevant. This case was followed in *City of Dublin Steam Packet Co.* v. *O'Brien* (1912) (*q*).

MUTUAL.

See INSURANCE, p. 258, CLUB, p. 153, and CO-OPERATIVE STORES, p. 160, and p. 46.

NATIONAL HEALTH INSURANCE CONTRIBUTIONS.

A deduction is allowed in respect of employer's State Insurance contributions.

(*m*) 27 Sc. L. R. 759; 54 J. P. 825; 2 Tax Cas. 643.

(*n*) A. C. 131; 76 L. J. K. B. 454; 96 L. T. 481; 71 J. P. 217; 23 T. L. R. 390; 5 L. G. R. 465; 5 Tax Cas. 242.

(*o*) A. C. 26; 70 L. J. K. B. 77; 83 L. T. 605; 49 W. R. 686; 4 Tax Cas. 265.

(*p*) 8 App. Cas. 891; 53 L. J. Q. B. 4; 49 L. T. 781; 32 W. R. 34; 2 Tax Cas. 25.

(*q*) 6 Tax Cas. 101.

NAVIGATIONS.

Inland Navigations are assessable under No. III. of Schedule A on the profits of the preceding year.

See *Humber Conservancy Board* v. *Bater*, [1914] (*r*). The Board received income from various sources and admitted liability except as to £4300 received as contributions from railway companies, etc., and it was held that the contributions were taxable under either No. III. of Schedule A as profits of "inland navigations," or under Schedule D as "other annual profits and gains" in the 6th Case.

See also *Dumbarton Harbour Board* v. *Cox* (1918), p. 174.

NEGOTIATION FEES.

In *Humphrey* v. *Peare* (1913) (*s*), an Agent was assessed in respect of fees payable for successful negotiations of sales of Irish Estates, and claimed that only a portion of the fees is payment for work done as negotiator, and that the balance is compensation for loss of employment as agent to the Estates sold and should be excluded from the assessment. It was held that the "money was paid as commission incident to services performed" in carrying out a contract for sale, and was therefore part of the annual profits arising from the vocation as agent and the whole was therefore assessable.

NURSERY GARDENS.

See p. 44.

PAPER PROFITS.

When shares are given for services rendered, the value of such shares is generally problematic, and in practice the assessment is held over for three years on the condition that, if the shares are sold in the interim, tax is paid thereon, but that if they are unsold at the expiration of the three years, the Commissioners will place a value thereon.

In the case of profits comprising unrealized shares or

(*r*) 3 K. B. 449; 137 L. T. 215; 6 Tax Cas. 555.
(*s*) 6 Tax Cas. 201.

options in other Companies, and the Company holding such shares retains them but enters them in the accounts at a lower value than the market value, the assessment may be based on the accounts, but an undertaking has to be given to account to the Revenue for :—

(1) Further profit made when the shares are disposed of, either in the course of business, or in winding up or reconstruction, and

(2) Any amount due on the shares being distributed amongst shareholders as dividends. (See *post.*)

An alternative method of assessment is for tax to be paid on the basis of actual receipts and expenses, the Company undertaking to pay tax on any profit from sale of the shares year by year up to three years from the time when they were first brought into account. At the expiration of the three years the remaining shares are valued by the Commissioners, and any balance due over the period is then payable.

(3) If no assessment on the market value has been made on shares which are subsequently distributed as dividends, the company is assessable on the average quoted selling price shown by the Stock Exchange lists for the month after payment of such dividend. In the event of there being no market quotation the Commissioners value the shares at the end of the year of assessment.

PARLIAMENTARY EXPENSES.

In *A. G. Moore & Co.* v. *Hare* (1914) (*t*), the company joined with other traders in promoting two Bills in Parliament for the construction of a railway line to avoid the unsatisfactory facilities given by a railway company. The latter ultimately agreed to give the desired facilities and the Bills were dropped. It was held that the expenses formed capital expenditure and were, therefore, not allowable. The LORD PRESIDENT accepted a dictum in *Vallambrosa Rubber Co.* v. *Farmer* (1910), " that capital expenditure is a thing that is going to be spent once

(*t*) S. C. 91 ; 6 Tax Cas. 572.

and for all, and income expenditure is a thing that is going to recur every year," but his Lordship stated the test was only a rough-and-ready one. In dissenting, LORD JOHNSTON mentioned that the expenses were not capital in the ordinary commercial sense.

PATENTS.

A deduction is not allowed for patent royalties, but tax is deductible by the payer at (*a*) the rate of tax chargeable during the period through which the royalty was accruing due when paid out of profits brought into charge (Rule 19 (2) of the General Rules to all Schedules), or (*b*) at the rate in force at the time of payment when *not* wholly payable out of profits brought into charge (Rule 21 of the General Rules). Sec. 25 (1) of the Finance Act, 1907.

The necessary expenses of working a patent are allowed in practice to the owner receiving royalties. See sec. 26 (1) of the Finance Act, 1922 (p. 275) *re* management expenses of *mineral* royalties.

See *British Dyestuffs Corporation, Ltd.* v. *I. R.* (1923), where a payment of £25,000 per annum for ten years was held to be assessable.

(See p. 308.)

PENALTIES.

In *I. R.* v. *Von Glehn & Co.* (1920) (*a*) the Company paid penalties for alleged infringement of the Customs (War Powers) Act, 1915, and legal costs, and claimed to deduct these in arriving at the assessable profits. The Court refused the deductions (following *I. R.* v. *Warnes & Co.*, 1919 (*b*)). It was held that the sums were not a "trading loss" and were not money expended to enable a person "to carry on and earn profits in the trade."

PENSIONS.

See SUPERANNUATION, p. 308.

PIT SINKING.

See MINES, p. 278.

(*a*) 123 L. T. 338. (*b*) 2 K. B. 444; 121 L. T. 125.

POWER SUPPLY.

It was decided in *Armitage* v. *Moore*, [1900] (*c*), that the profits of supplying steam power were assessable. The firm traded as worsted spinners and also supplied power. On a deed of assignment being executed the trustee discontinued the spinning but continued the power supply for the benefit of the creditors.

PRELIMINARY EXPENSES.

A deduction is not allowable for preliminary expenses on the formation of a Company, except for new books.

QUARRIES.

Quarries of stone, slate, limestone, and chalk are assessable under No. III. of Schedule A on the profits of the preceding year.

See *Jones* v. *Cwmmorthin Slate Co.* (1879), C. A. (*d*), in which it was held that a quarry does not become a mine (see p. 276) because the slate was obtained from underground working, and that the tax is not imposed upon the method of work but upon the article worked.

RAILWAYS.

Railways are assessable by the Special Commissioners under No. III. of Schedule A on the profits of the preceding year.

See DEPRECIATION, p. 173, and PAYMENT at p. 385, and *Caledonian Railway Co.* v. *Hassall* (1919) (*f*).

REMOVAL EXPENSES.

It was held in *Granite Supply Association, Ltd.* v. *Kitton*, [1905] (*e*) that a Company removing their business to larger premises and defraying the cost out of Revenue is not entitled

(*c*) 2 Q. B. 363; 69 L. J. Q. B. 614; 82 L. T. 618; 4 Tax Cas. 199.
(*d*) 5 Ex. D. 93; 49 L. J. Ex. 110; 41 L. T. 575; 44 J. P. 168; 28 W. R. 237; 1 Tax Cas. 267.
(*e*) 43 Sc. L. R. 65; 8 F. 55; 5 Tax Cas. 168.
(*f*) 56 Sc. L. R. 506.

to deduct the expenses of carting granite from the old yard to the new, nor of taking down and re-erecting cranes.

In practice however a deduction is allowed for—

(*a*) the expenses involved in removal of stock whether such removal is forced or voluntary ;

(*b*) other removal expenses where the removal is forced, but not where it is voluntarily undertaken for improvement of business.

RENEWALS.

See p. 164.

In *Hall* v. *King's Lynn Harbour Moorings Commissioners* (1875) (*ff*), a deduction was admitted in respect of repayment of money borrowed to cover renewal of works.

REPAIRS.

Repairs of premises occupied for the purpose of the trade are allowed, and this includes "Tied houses" (see p. 104), Rule 3 to Cases 1 and 2 of Schedule D.

RESERVES.

Payments to Reserves are not deductible. See p. 317.

See *I. R.* v. *Western S.S. Company* (1907), p. 139, and *Legg* v. *I. R.* (1922), p. 139.

RETIRING GRATUITY.

A gratuity is paid by the Incorporated Council of Law Reporting to reporters on retirement, and it was held in *W. Smith* v. *Incorporated Council of Law Reporting* (1914) (*g*), that the gratuity formed a deductible allowance in arriving at the assessable profits of the Council. The sum in question was £1500, and MR. JUSTICE SCRUTTON held himself bound by the facts found by the Commissioners, and he was of the opinion that the gratuity would affect the salary paid.

(*ff*) 1 Tax Cas. 23.
(*g*) 3 K. B. 674 ; 83 L. J. K. B. 381 ; 30 T. L. R. 588 ; 6 Tax Cas. 477.

ROYALTIES.

No deduction is allowed for royalties, as tax is deductible from the payments. If the assessable profits do not reach the amount of royalties payable in the current year, the assessment is in practice made to cover royalties. Sec. 25 of the Finance Act, 1907 (now Rule 3 (m) of Cases 1 and 2 of Schedule D, and Rules 19 and 21 of the General Rules to all Schedules), disallowed a deduction for patent royalties. See *Lanston Monotype Co.* v. *Anderson* (1911) (*h*), where it was held that when there were no royalties payable in the year of assessment 1907–8, the 1907 Act did not operate, although payments were made in the years comprising the average, as the 1907 Act was not retrospective and the adding back of royalties and deduction of tax by the payer presumes an ability to recover by deduction what has been paid as honorary collector to the Crown. This decision does not cover the case of an average of years subsequent to 1907. In *Boyd* v. *I. R.* (1918) (*i*) a royalty of £400 per annum had been paid for some years but ceased in 1916. The Court held that the 1917–18 assessment should be on the three years' average before any deduction of royalty paid in those years.

See *Bradbury* v. *English Sewing Cotton Co.* (1922).

See p. 303.

SEWERS.

Sewers are assessable under General Rule 1 of Schedule A on the "Annual Value" and not under No. III. of Schedule A. (See Waterworks, p. 312.)

SECURITIES.

See pp. 207, 369.

SHARES.

See p. 301.

SHIPS.

See DEPRECIATION, p. 163, and pp. 52, 139, 358.

(*h*) 2 K. B. 1019. (*i*) 55 Sc. L .R. 661.

STALLIONS.

See p. 169, and also *Malcolm* v. *Lockhart* (1919) (*k*), which held that a farmer was liable under Schedule D on stallion fees.

SUBSCRIPTIONS.

Trade Protection Associations.—In *Guest, Keen & Nettlefolds, Ltd.* v. *Fowler,* [1910] (*l*) the Company was a member of the Steel Hoop Manufacturers' Association, which was formed mainly for the purpose of keeping up prices and thus reducing competition and increasing profits on which tax is paid. The orders received by the members were divided in fixed proportions, and any member who invoiced more than his proportion paid 10*s.* per ton on the excess to a Pool Account, which is distributed amongst members who have not invoiced their full proportion.

The Company claimed to deduct the excess of the net payments to the Association (including a share of administrative expenses) over the receipts therefrom, and it was held that such a deduction was admissible.

BRAY, J., ruled that the expense was " wholly and exclusively " laid out for the purposes of the trade, and this decision marks a departure from the hitherto existing, strained Crown advocacy of the interpretation of the law, by allowing deduction of a sum which was *not necessary to the carrying on of the business,* but which resulted in increased profits on which tax was paid.

See *Rhymney Iron Co.* v. *Fowler,* at p. 277, which disallowed subscriptions for indemnification against strikes, and *Lochgelly Iron Co., Ltd.* v. *Crawford* (1913) (p. 277).

The Practice—Employers' Contributions.—In practice, subscriptions, entrance fees, and levies paid by members of Trade Protection Associations may be deducted as a trade expense and the following conditions apply :—

(1) The Association pays tax on the balance of income over expenditure on the average of three years, and expenditure comprises all administrative expenses, all payments

(*k*) A. C. 463 ; 7 Tax Cas. 99.

(*l*) 1 K. B. 713 ; 79 L. J. K. B. 563 ; 102 L. T. 361 ; 26 T. L. R. 337 ; 5 Tax Cas. 511.

to members from compensation for strikes and grants or payments (other than loans) and legal charges in defending test cases on behalf of members, including contributions to other organizations which have entered into similar arrangements as these.

(2) The recipients of compensation in labour disputes, and of any other kind of grant or payment, credit their trading accounts therewith.

(3) The existing and future accumulated funds to be regarded as taxed income in the event of the Association being wound up and funds distributed.

Deduction is also allowed for :—

(*a*) Subscriptions to a master's federation or to a Company to insure against, or to provide compensation for, accidents to work-people.

(*b*) Payments made for compensation to workmen for accidents, or to a miner's permanent fund or to a men's sick fund, under agreement with the employees, in order to relieve the trader from statutory damages under the Employers' Liability Act.

Production of Accounts of Associations. — In *Grahamston Iron Co.* v. *Crawford* (1915), it was laid down that the accounts of the association could be required by the surveyor as a condition of deduction.

SUPERANNUATION.

Deductions were allowed, in practice, in respect of employees' compulsory contributions to Superannuation Funds and employers' contributions subject to certain restrictions, but sec. 32 of the Finance Act, 1921, gave a legal right to allowance. The section has the following points :—

(1) Income from investments or deposits of a Superannuation Fund is exempt.

(2) Employees' contributions are deducted.

(3) An annuity paid out of a Superannuation Fund may be charged direct on the recipient instead of by deduction.

(4) The employees' contribution can only be allowed if it is an " ordinary annual " one.

(5) A contribution by an employer which is not an ordinary one may, at the Revenue's discretion, be treated as an expense of the year in which it is paid or spread over such period of years as the Revenue thinks proper.

(6) " Superannuation Fund " means a fund approved by the Revenue. The approval is not to be given unless :

(*a*) it is a fund *bonâ fide* established under irrevocable trusts in connection with some trade or undertaking carried on in the United Kingdom by a person residing therein;

(*b*) the sole purpose of the fund is the provision of annuities for employees on retirement at a specified age or on becoming incapacitated at an earlier age ;

(*c*) the employer is a contributor to the fund ;

(*d*) the fund is " recognized " by the employer and employees.

Power is given to the Revenue to approve a fund, on conditions, even though

(*a*) the rules of the fund provide for a return of annuities ;

(*b*) if the *main* purpose of the fund is the provision of annuities ;

(*c*) if the trade is carried on only *partly* in the United Kingdom and by a person not residing therein.

(7) The Revenue is empowered to make regulations generally and, in particular, " without prejudice to the generality of the foregoing provision " to :

(*a*) provide for charging and accounting for tax in respect of contributions (including interest) repaid to a contributor, and on lump sums paid *in commutation* of or in lieu of annuities as if such sums repaid or paid were income of the year in which they are repaid or paid ;

(*b*) require production of such particulars as may reasonably be required ;

(*c*) provide for the method of claim for relief and approval, withdrawal of approval and determination of what are " ordinary annual contributions."

(8) Contributions allowable under sec. 32 of the Income Tax Act, 1918, are not within the above.

See SCHEDULE E, p. 360, and Superannuation Funds under a public general Act of Parliament (p. 347).

See *Hancock* v. *General Reversionary and Investment Co.* (p. 142), and *Rowntree & Co., Ltd.* v. *Curtis* (1923).

THEFT.

A deduction is allowed in respect of employee's theft.

TIED HOUSES.

See BREWING, p. 104.

TRAMWAYS.

Tramways are assessable under Schedule D, not under No. III. of Schedule A.

Tramway Companies and other Tramway proprietors occasionally lease their lines, and a deduction is allowed, by repayment, for the management expenses of the lessor.

See DEPRECIATION, p. 163.

A question arises in the case of a leased tramway when there is an element of doubt as to who will be liable to the maintenance and restoration, within Rule 6 of Cases 1 and 2 of Schedule D, but the question is one for the determination of the Commissioners, and if an allowance is made to the lessor, and it subsequently transpires that the lessor is not liable, repayment of the allowance cannot be claimed by the Revenue, and, conversely, if the allowance is refused by the Commissioners and it transpires that the lessor is liable, repayment cannot be obtained by the lessor.

TOLLS.

Tolls are assessable under No. III. of Schedule A on the profits of the preceding year.

TRADE PROTECTION SUBSCRIPTIONS.

See SUBSCRIPTIONS, p. 307.

TRADE UNION.

See FRIENDLY SOCIETY, p. 236.

TRAVELLING EXPENSES.

A deduction is not allowed for travelling expenses between the residence of the person assessed and his place of business. (See Schedule E, p. 363.)

TREASURY BILLS.

Discounts on Treasury Bills are assessable under Rule (1) (*b*) of Case 3 of Schedule D, *Brown* v. *National Provident Institution* (1921) (*ll*). See also pp. 64, 192.

UNDERWRITER.

The assessment of underwriters in respect of the part of underwritten shares required to be taken up by him, is restricted to the proportion of commission, in cash or shares, relating to shares of which he has been relieved by public subscriptions. When the market value of shares taken up personally by an underwriter falls below the cost to him, the difference forms a deductible allowance.

UNEXECUTED CONTRACTS.

See CAPITAL EXPENDITURE, p. 136.

UNEXPIRED RISKS AND UNEARNED PREMIUMS.

See INSURANCE, p. 256.

VICTUALLER.

See ANNUAL VALUE, p. 95.

WASTING ASSETS.

See CAPITAL EXPENDITURE, p. 134.

WATERWORKS.

Waterworks are assessable under No. III. of Schedule A on the profits of the preceding year.

See also MUNICIPAL, p. 283.

(*ll*) 125 L. T. 425

In *Ystradyfodwg and Pontypridd Main Sewerage Board* v. *Bensted*, [1907] H. L. (*m*), a sewer was held to be assessable under General Rule 1 of Schedule A on the *annual value*. The point has since been dealt with by sec. 34 of the Finance Act, 1921, which provides that tax shall not be charged on a sewer *vested in a local authority* in the United Kingdom. This does not extend to a rent payable or other annual payment to be made by the authority in respect of the sewer.

"Sewer" is defined as being a sewer maintained by a local authority in pursuance of their statutory duties in relation to public health.

"Local authority" means a public body having power under enactments relating to public health to construct and maintain sewers.

The appellant's contention in the above case that a sewer fell under No. III. of Schedule A as a "drain" (see p. 57), and therefore assessable on the *profits*, was not upheld. Dicta was delivered to the effect that No. III. of Schedule A referred solely to trading concerns, and in *Harris* v. *Edinburgh Corporation*, [1907] (*n*), the Corporation was unsuccessful in attempting to bring a public slaughter-house within No. III. under the sweeping words "concerns of the like nature" (see p. 57). The revenue derived from the slaughter-houses consisted of such rents and dues as would meet the necessary expenses and an annuity of £1000 payable to the Corporation in respect of the cost of erection. The rents and dues were by law to be so adjusted as not to produce an amount in excess of the expenses and annuity.

LORD MCLAREN delivered the following dicta :—

> "Now, if I am right in my conclusion that these slaughter-houses are not carried on with a view to profit, and that no profit in any true sense is made, the provisions of No. III., Rule 3, are inapplicable. But it does not follow that the

(*m*) A. C. 264 ; 76 L. J. K. B. 876 ; 97 L. T. 141 ; 71 J. P. 425 ; 23 T. L. R. 621 ; 5 L. G. R. 865 ; 5 Tax Cas. 230.

(*n*) Sess. Cas. 1233 ; 44 Sc. L. R. 873 ; 15 Sc. L. T. R. 233 ; 5 Tax Cas. 271.

subject is to escape taxation, because the only result of excluding No. III. and all its rules is to put the subject into the category of property in the natural occupation of its owner who is not using it as a profit-yielding investment, and it is thus chargeable according to the General Rule No. 1 of Schedule A upon the rent at which it is worth to be let by the year.

"This is the principle of the decision of Mr. Justice Walton in the case of the Ystradyfodwg Sewage Board (1906), 1 K. B. 308, where the learned judge considered it to be perfectly clear that the mode of assessment prescribed by No. III., Rule 3 of Schedule A could not be applied to undertakings that were not established or carried on with a view to profit."

It will be observed that in the sewerage and slaughter-house cases neither of the subject-matters of assessment was *specifically mentioned* in No. III. of Schedule A, and it was sought to bring them as follows :—

(1) Sewers within "drains."

(2) Slaughter-houses as "other concerns of the like nature."

There is thus a vital distinction between waterworks or gasworks, which are specifically mentioned in No. III. of Schedule A, and sewers and slaughter-houses which are not, and mere dicta on a distinguishable point cannot be applied to a special provision of the law, and any injustice which may result from the different methods of assessment must be attributable to the state of the law. Mere dicta cannot override a specific provision of the law, and the question as to whether a concern mentioned in No. III. of Schedule A should be transferred from No. III. to No. I. when such concern is not run for profit, was not before the Courts in either case.

There is no material distinction in trading between such a waterworks not carried on for profit, and one run solely as a commercial undertaking, the only difference being that the rates charged for the water are lower in the former than the latter. There are vendors and vendees equally in either case. Moreover, waterworks are expressly assessed under No. III. of Schedule A, and No. I. of Schedule A *specifically* provides that it does not apply to concerns in No. III. (p. 16), therefore, as

it cannot be disputed that a charitable or municipal undertaking is a "waterworks," No. I. is prohibited. See, however, *Shaw* v. *Conduit Lands Trustees* (1920).

The Crown further contends that there cannot be profits as the concerns do not "trade," but it was laid down in *I. R.* v. *Incorporated Council of Law Reporting* (1888) (*o*), that "trading" does not necessitate making or seeking profits.

WEAR AND TEAR.

See DEPRECIATION, p. 163.

(*o*) 22 Q. B. D. 291; 3 Tax Cas. 105.

CHAPTER IV

PREPARATION OF RETURNS AND ACCOUNTS

Production of Accounts.—The *sole* authority to require production of accounts lies with the Commissioners, but the Inspector of Taxes is statutorily empowered to require an opportunity of inspection of accounts furnished to the Commissioners and of taking copies thereof. The demand of an Inspector of Taxes for accounts can only be supported on the authority, expressed or implied, of the Commissioners, but a peremptory refusal to supply accounts may obviously prejudice a case, and would, in all probability, result in an inflated estimated assessment.

As the Inspector of Taxes is the official who, *in practice*, is actually responsible for the initial making of the assessment there is no justification for refusing production to him of the ordinary accounts of a trader. A refusal costs a reasonable inference that there is an insidious object.

Law Involved.—The following reply of the Board of Inland Revenue to the inquiry of an Accountant who was opposing production of a Balance Sheet, shows the scope of the powers of the Inspector of Taxes. The Accountant had written a prior letter, and had been informed by the Board that the application of an Inspector of Taxes for accounts was of the nature of a request, not a statutory obligation.

> " I am directed by the Board of Inland Revenue to point out that in your letter of the 27th ult., you referred to a request made by the (surveyor) of taxes for balance-sheets to be produced, and that the Board's reply of the 2nd inst. related only to (surveyors) of taxes. The commissioners of taxes, through their clerk, have statutory powers (5 & 6 Vict. c. 35, s. 120, now sec. 139 of the 1918 Act, *post*), to demand the production of

'all particulars required by them' for the purpose of determining an appeal against an income tax assessment."

Sec. 100 of the Income Tax Act, 1918, provides that :—

(1) Every person chargeable under this Act, when required to do so by any general or particular notice given in pursuance of this Act, shall, within the period limited by such notice, prepare and deliver to the assessor a true and correct statement in writing as required by this Act (*i.e.* by sec. 190, *post*), signed by him, containing—

(*a*) the annual value of all lands and tenements in his occupation, whether situate in one, or more than one parish ;

(*b*) the amount of the profits or gains arising to him from all and every source chargeable according to the respective schedules, estimated for the period and according to the provisions and rules of this Act.

(2) To the said statement shall be added a declaration that such values or amounts are estimated in respect of all the sources of income mentioned in this Act, describing the same, after deducting only such sums as are allowed.

No. VII. of the Fifth Schedule in the Income Tax Act, 1918, requires :—

The amount of the profits or gains thereof, upon a fair and just average of the three preceding years, or of such shorter period as the trade has been carried on.

The above provisions do not require accounts, but merely a return of the amount of the net assessable profits, such, *e.g.* as on the annual Form of Return.

Balance Sheets.—The above sections restrict the preliminary requirements of the Revenue to a return, in contradistinction to accounts, but accounts are in practice supplied annually to Inspectors of Taxes, as otherwise an estimated assessment would be made, leaving the adjustment thereof to be made on appeal. It is provided by sec. 139 of the Income Tax Act, 1918 (*post*) that if the commissioners "have received notice of appeal" statements may be required, but controversy existed on the question of the necessity of production of Balance Sheets, requests for which originate annually from Inspectors of Taxes and were strenuously opposed by the professional representatives of many taxpayers, on the ground of disclosure

of the exact financial standing of a tax-payer to the District Commissioners who may be rivals in business, and it is thought that a Commissioner who may, *e.g.* be a Creditor of the particular taxpayer, would, on inspecting the Balance Sheet, note the financial position, and if this were unfavourable, press for payment of his debt.

The question is not so serious in practice as from a theoretical point of view, as the Commissioners almost invariably do not see a Balance Sheet unless a dispute exists and the matter is taken to appeal, but admittedly the possibility of the Commissioners' inspection is an existent factor. The indispensability of Balance Sheets for Excess Profits Duty purposes and their regular production has familiarized tax-payers with production and made objections negligible. The Inspector of Taxes' reasons for requiring a Balance Sheet are *inter alia*—

(1) Verification of the Machinery and Plant account for Depreciation purposes, such, *e.g.* as in respect of "additions."

(2) Increases in reserves, as payments thereto are not an allowable deduction.

(3) State of loan accounts as regards payments of interest, which also do not form a deductible allowance.

In one District the difficulty of disclosure of financial standing has been overcome by the Commissioners accepting Balance Sheets with Debtors, Creditors, and Totals omitted. The Balance Sheet thus produced gives all requisite particulars of machinery and plant, etc., and yet avoids the possibility of the Commissioners ascertaining the financial position. Moreover, a request that the Balance Sheet would not be shown to the Commissioners has been agreed to, and no material objection can of course be raised as regards disclosure to Inspectors of Taxes, who are in no way "local" individuals and who are extensively moved from one District to another. As the Inspector is primarily responsible for arriving at the liability he is quite justified in requiring any information, as, *e.g.* Balance Sheets, which might throw any light on the Income Tax profit.

Moreover, a taxpayer has a right of being assessed by the Special Commissioners (p. 13), which prevents any accounts coming to the notice of the local commissioners.

It may be urged that the amended Balance Sheet in question would not remove the difficulty, as the Commissioners could readily find the excess of debts owing over debts due, by totalling, but in practice this objection is one which is absolutely negligible, as, although the Commissioners would be able to do that, such a possibility may be ignored. The omission of the Capital account would remove the difficulty.

Legal Right to Balance Sheets.—Sec. 139 of the 1918 Act authorizes the Commissioners to require details.

The Section reads :

> (1) If the general commissioners have received notice of appeal against an assessment made by the additional commissioners, or see cause to allow the objection of the surveyor to any such assessment, they shall issue a precept to the appellant ordering him to deliver to them, within the time limited by the precept, a schedule containing such *particulars*, for their information, *as they may demand under the authority of this Act*, respecting :—
>
> (*a*) the property of the appellant ; or
>
> (*b*) the trade, profession, employment or vocation carried on or exercised by him ; or
>
> (*c*) the amount of his profits or gains, distinguishing the particular amounts derived from each separate source ; or
>
> (*d*) any deductions made in arriving at his profits or gains,
>
> which particulars the said general commissioners are hereby empowered and required to demand *at their discretion* whenever the same shall *appear to them necessary* for the purposes mentioned in this Act.

The section further provides—

(*a*) Further precepts may be issued until complete particulars have been furnished to the satisfaction of the Commissioners.

(*b*) In cases of refusal, for the imposition of a penalty not exceeding £20 and treble duty, and

(*c*) that the Inspector of Taxes may inspect and take copies of or extracts from any Schedule.

It would appear from a *primâ facie* consideration of sec. 139 that the Commissioners are, in fact, entitled to demand Balance Sheets and any other desired particulars, but a closer examination of the section tends to prove that the Commissioners' powers do not extend to Balance Sheets.

The Commissioners are first authorized to require a Schedule containing such particulars as they shall demand, "under the authority of this Act." This limitation refers to sec. 100, and No. VII. of the Fifth Schedule (*ante*), and merely covers a return of net profits. It may be contended that the words "under the authority of this Act" merely mean that the Commissioners are "authorized by this Act" to demand, etc., but this contention would assume the farcical construction that the section creates a superfluous authorization, as obviously the words of a section are in themselves *authority* without specifically enunciating the double authority, or, in other words, the equivalent of "the Commissioners are authorized to demand particulars, and they are authorized by this Act." The section says that the Commissioners shall direct their "precept to the appellant ordering him to deliver to them," and later imposes a penalty for non-compliance.

The words in question are therefore merely restrictive.

Sec. 139 then proceeds to authorize the Commissioners to require particulars of the deductions made by the taxpayer in the return (*ante*), and this confirms the contention that the former part of the section merely refers to a schedule or return of the total net amount.

The section then continues that the Commissioners may continue to demand, *at their discretion*, particulars "until complete particulars have been furnished to their satisfaction."

Now it is contended that the latter quoted words are wide and unqualified, and so they would appear to be from a surface observation, but there is an acknowledged principle of legal interpretation—*ejusdem generis*—that when you find sweeping words they must always be construed with

reference to what has gone before; that the words must be read as meaning "all the particulars required of the same kind as those specified," *i.e.* by secs. 100, 139, and No. VII.

It will thus be seen that a certified extract of any account in dispute, such as Machinery and Plant, would be well within the requirements of the section.

Moreover, the restriction of required particulars would point to the limitation of the requirements to extracts and answers, but the production of Trading and Profit and Loss accounts cannot, in equity, be reasonably questioned, as the Inspector of Taxes cannot be expected to make an assessment without such an aid, and in normal cases where no question arises of the local Commissioners seeing the Balance Sheet, the production of the latter cannot reasonably be withheld. Summarizing the position, there is no justification, normally, in refusing a Balance Sheet.

See *Neil* v. *I. R.* (1918), *re* Excess Profits Duty.

The insupportability of a *legal* demand for Balance Sheets being founded on sec. 139, is apparent when it is considered that if the contentions of the Crown are correct, the section need only have authorized the demand for "any particulars required," the remainder of the lengthy section being obviously superfluous.

Precepts.—The following official precept for accounts was first drawn up by the Board in 1914 :—

INCOME TAX—YEAR 191 -191 .

Parish of

Appeal No.

Assessment No.

To

With reference to your notice of Appeal against the Assessment of £ upon you for the above year, I am directed by the General Commissioners for the Division to give you notice that they require you to furnish copies of the Balance Sheets, Trading Accounts, and Profit and Loss Accounts of your business for each of the last years ending :—

(1) either on the date, preceding the 5th day of April, 191 , to which your accounts are usually made up, or
(2) on the said 5th of April.

showing, *inter alia* :—

(a) the value of the stock at the beginning and end of each year;
(b) the amount of Purchases and Sales of each year;
(c) particulars of the several deductions claimed from gross profits each year;
(d) particulars of the various assets and liabilities as at the beginning and end of each year.

These copies should be sent to the Surveyor of Taxes at as soon as they are ready, and not later than 191 .

If your accounts have not been prepared in such a manner, copies in the form in which they have been prepared should be sent, when you will be advised if further information is required.

All accounts tendered in evidence must be certified as correct, dated and signed by you, and the Commissioners may require them to be verified on oath.

If your business has been set up within three years, accounts should be furnished as from the date of its commencement.

The name of the Parish and the number of the Assessment should be quoted on any accounts or further communications.

It will facilitate a settlement if you will *call on* the Surveyor of Taxes with the accounts in support of your Appeal.

CLERK TO THE COMMISSIONERS OF INCOME TAX.

Dated 191 .

The form for employments, etc., requires the gross earnings and expenses.

PREPARATION OF ACCOUNTS.

See AVERAGE, p. 49.

A Trading and Profit and Loss Account should be supplied annually to the Surveyor of Taxes, who files all the past year's accounts, and is thus able to strike the average of three years, etc.

The accounts supplied should not be adjusted for Income Tax purposes, but should be the ordinary commercial accounts, *i.e.* copies of the accounts as in the books of the concern.

See REQUIREMENTS OF PRECEPT, *ante*.

Proper accounts are not always available, particularly in the case of retail traders. The best account that can be produced is considered, even though it is only on a cash basis,

that is, it takes account solely of cash received and paid, ignoring actual amounts earned and due, but estimated assessments result, in many cases, from such accounts.

Where there has not been an annual stocktaking, and a 3 years' account with stock at beginning and end, can be furnished, this account should be produced.

Doctors and Solicitors.—A cash statement will be accepted in the case of doctors and solicitors.

First Accounts.—When accounts are made up for the first time, proper books not having been previously kept, the first year's account can settle the assessment, the business being placed on the footing of a new business, unless it appears that the profits of the previous years which would fall into the average probably exceeded those of the year for which the accounts had been prepared.

The example on the opposite page shows the working of an account for Income Tax purposes for the year of assessment 1922–23.

The gross Schedule A assessment on the *works* is £600, and the net £500, and the rent £360, therefore the rent is added back, and the gross Schedule A allowed. (See ANNUAL VALUE, p. 95.)

Dividends, being already taxed by deduction at the source, do not form part of the receipts for Income Tax purposes.

The adjustments would be made as follows, round £'s being adopted in practice :—

(1)	Profits		£5454
(2)	Rent		360
(3)	Income Tax Schedules A and D		308
(4)	Partners' salaries		2000
(5)	Depreciation of machinery and plant		502
(6)	Depreciation of fixtures		41
(7)	Loan Interest		450
		£	9118
(8)	*Less* taxed dividends	125	
	,, gross Schedule A	600	
		—	725
			£8393

YEAR ENDING 31ST DECEMBER, 1921.

	£	s.	d.		£	s.	d.
To Stock @ 1st Jan., 1921 .	6,824	10	0	By Sales . .	28,860	2	8
,, Purchases .	14,810	5	6	,, Discounts .	240	11	2
,, Rent, rates, and taxes .	976	10	2	,, Dividends .	125	0	0
,, Wages . .	4,280	1	7	,, Stock @ 31st Dec., 1921 .	8,240	15	8
,, Partners salaries .	2,000	0	0				
,, Fire, lighting, &c. .	824	10	6				
,, Carriage .	155	11	2				
,, Insurance, Compensation, &c. .	247	6	4				
Advertising .	124	8	2				
,, Bad debts written-off .	552	8	7				
,, Depreciation of machinery and plant .	502	0	0				
,, Depreciation of fixtures .	44	0	0				
,, Bank charges	42	10	11				
,, Legal and accountancy charges .	68	2	4				
,, Discounts .	110	5	2				
,, Loan interest	450	0	0				
,, Profit . .	5,453	19	1				
	£37,466	9	6		£37,466	9	6

Item (3) is the amount of Income Tax included in "Rent, Rates, and Taxes."

Assuming that the profits of the years 1919 and 1920 have been similarly adjusted at £4280 and £5390 respectively, the assessment would be based as follows :—

Year to 31st December, 1919		£4,280
,, ,, ,, 1920		5,390
,, ,, ,, 1921		8,393
		3)18,063
		6,021 = average profit.
Less depreciation @ 5 per cent. on Machinery and Plant at 31st December, 1921	£448	
Do. Fixtures	40	
		488
= 1922–23 assessment		£5,533

For details of the deductible and non-deductible allowances in the account, see Chapter III.

The machinery and plant account was :—

Value at 31st December, 1920		£8,540
Less allowed 1921–22 at 5 per cent.		427
		8,113
Add additions in 1921		860
Value at 31st December, 1921		£8,973 @ 5 per cent. = £448

Limited Company.—In the case of a limited company the principles are similar. Salaries and directors' fees would be deductible, and other items are treated under their respective heads in Chapter III.

Shopkeepers.—The following actual adjustment in the case of a retail shopkeeper illustrates the practice :

Profits per a/cs		£512
Income Tax		5
⅓ Rates and part gas		10
Ground Rent		8
		535
Less ⅔ net Schedule A		30
		505 = 1921
		382 = 1920
		352 = 1919
		3)1239
		£413 = assessment 1922–23

The following adjustments apply :—

Brewery.—

Profit per a/cs		£8,136
Interest		520
Depreciation.		624
Income Tax A and D . . .		280
Reserves		100
Law Charges *re* Mortgages . .		27
		9,687
Less net Schedule A—		
Brewery . . .	£44	
Managed and Tied Houses	525	
	—	569
		9,118 = 1914
		4,720 = 1913
		6,262 = 1912
		3)20,100
		£ 6,700 = assessment 1915–16

less depreciation.

Under *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce* (1915) (p. 104), deductions are now allowable for repairs, insurance premiums, &c., in connexion with tied houses.

Interest Payable.—

(1) If *e.g.* the *assessable* profit amounts to £100, and the interest payable in respect of loans is £450, the assessment would be made on £450, and tax would be deducted and retained by the payer on that amount when paying the interest. If, however, the net Schedule A assessment on which the trader had *borne* tax—*i.e.* if he is owner of the premises, the whole—and if the rent is, say £200, and the net Schedule A £300, £100—the assessment would be less by the amount on which tax is borne, and similarly it is reduced by the amount of other taxed income, such as dividends.

Assuming that the assessable profit was £100, the interest payable *in the year of assessment* £450, the net Schedule A on

which tax had been borne £100, and taxed dividends £200, the assessment would be :—

		£
Interest payable		450
Less net Schedule A . .	£100	
,, gross taxed dividends	200	
		300
		£150

(2) Had the Schedule A and taxed dividends amounted to £450 or more, no assessment would be made under Schedule D, except on the profit of £100 as earned income if applicable (see p. 342). The reason for setting off taxed income against interest payable, is that the taxed income has borne tax, and as the payer of the interest deducts tax and retains it, the Revenue obviously receives tax on the £450 interest. The loan could, of course, be secured on, *e.g.* the dividends, and be, therefore, a charge thereon. The setting off of taxed income applies to *any* taxed income and is not restricted to income specifically charged with the interest.

(3) If the interest payable is £450, and the profit, after adding back such interest, is £650, the assessment would be made on the latter amount.

(4) **Depreciation.**—If the assessable profit is £600, the interest payable £450, and the depreciation allowance £300, the assessment would, apart from interest, be made on £600 less £300 depreciation, but interest would have to be kept in charge at £450, leaving a balance of allowable depreciation of £150 (£600 — £450), and this balance of £150 would be carried forward to future years (p. 165). If there were taxed income, such as dividends or Schedule A, the amount thereof would increase the depreciation allowable in the particular year. Thus, if there were taxed income of £100, the interest retained in the assessment would be £350, viz. £600 — £250 depreciation, and £50 unallowed depreciation would be carried forward to subsequent years.

Rent.—As will be seen from the above examples, the

practice is to add back the rent and allow the net Schedule A (see p. 97, *re gross* Schedule A), as a tenant's right to deduct tax when paying rent is limited to deduction on the rent paid ; thus with a net Schedule A assessment of £100 and a rent of £60, the tenant could only deduct tax on £60 and would have to bear the tax on the balance of £40, which sum is counted as part of the tenant's income (see Exemptions and Relief, p. 342, and also Repayment, p. 411).

Returns.—The completion of the Return involves, as regards the profits of trade, the insertion of the adjusted profit as ascertained from the account referred to *ante*. Page 3 is, to a material extent, a repetition of page 2, and the latter need not be filled in when a claim for exemption, abatement, or relief as regards the earned rates or children is concerned (thus a limited company need only complete page 2), except that claims for Wear and Tear and Life Insurance Premiums have to be made on page 2, and it is necessary that the former claim should be made even though a loss is returned, in order to ensure the carrying forward of the Wear and Tear to subsequent years.

Ground Rent.—Where exemption or relief is claimed an assessment must be retained on ground rents or interest payable, as tax is deductible therefrom by the payer. This also applies to *e.g.* collieries which do not make profits, but pay royalties.

Stock.—In *Craig (Kilmarnock), Ltd.* v. *Cowperthwaite* (1914), £25,000 was paid for assets standing in books at £75,000, and the purchase price was apportioned as to £5625 stock and £19,375 other items. The stock was actually valued at £12,790, and it was held that this figure must be used in the accounts.

Claims.—

(*a*) The amount to be inserted on the return is the average profit shown by the accounts (*ante*) after deducting Wear and Tear.

(*b*) The Income from property has to be given, and although

the rents received are requested to be stated, they are ignored in arriving at the total income, and the net Schedule A assessments substituted therefor, but any allowances for losses of rent through voids or otherwise should be deducted. When, however, the income from the property is less than the net Schedule A assessment, such, *e.g.* as when the tenant has a beneficial occupation, the rent, less repairs, should be inserted. (See VOIDS, p. 37.)

The annual value (that is the net Schedule A assessment) of property occupied by the owner has to be included.

(*c*) The Schedule A assessment, which in general is the gross Schedule A assessment, is the amount for insertion for lands occupied.

(*d*) Untaxed interest should be distinguished, and the amounts of interest, dividends, etc., are those received in the preceding year. Strictly the income of the year of assessment should be given in respect of taxed dividends, but this obviously cannot be followed except on repayment claims (p. 411) at the end of the year. See p. 193 as to amount to be inserted in respect of "free of tax" dividends.

In the case of Foreign Possessions (see p. 207) the amount to be entered is the average of the three preceding calendar or tax years, and Foreign Securities (see p. 205) the amount due in the current year.

The choice of "tax" or "calendar" year is left to the taxpayer.

Nothing is to be included in the above return which is not taxable, as *e.g.* casual profits from realization of securities or property should be excluded.

The amounts inserted should not be exclusive of Income Tax paid thereon.

Example—Year, 1923–24.—A chemist has the following sources of income: average profits of trade £630, Dividends (gross) £30, Bank Interest £5, Property £24. In addition he owns his residence of a rental value of £30 and on which there is a mortgage of £300 at 5 per cent. He pays Life Insurance of

£10, and has two children under the age of sixteen on the 6th April, 1923, his wife being alive on that date.

The paragraphs of the Return Form are completed as follows (descriptions of properties being added). Tax deducted from dividends (p. 351) should be added. Tax should also be added to dividends paid "free of tax" (see p. 193).

(*a*) Chemist (£630 — 10%, p. 342) . .	£567
(*b*) None.	
(*c*) (24 + £30) — ¼th (p. 27) . . .	40
(*d*) None.	
(*e*) £30 taxed and £5 untaxed . . .	35
(*f*) None.	
Total	642

No. 2.

"None" is inserted against all the items, except "amount of mortgage or loan" which reads:	
£300 at 5 per cent. (The designation of the payee is inserted.) . . .	15
	£627

The total income, therefore, for relief purposes is £642. (See p. 341.)

The liability would be as follows (see p. 341). Tax is deductible from the mortgage interest :—

Assessable Income . . .		£642		
Less allowance . . .	£225			
„ children . . .	63			
	—	288		
		354		
			£	*s.*	*d.*
225 @ 2*s.* 3*d.* =			25	6	3
129 @ 4*s.* 6*d.* =			29	0	6
			54	6	9
Less Life Assurance £10 @ 2*s.* 3*d.*			1	2	6
			53	4	3
The taxpayer would recover £15 @ 4*s.* 6*d.* =			3	7	6
Total tax borne			£49	16	9

			£	s.	d.
The charge could be :—					
Dividends (by deduction)	£30 @ 4s. 6d.		6	15	0
Property	40 @ 4s. 6d.		9	0	0
Bank Interest	5 @ 4s. 6d.		1	2	6
Trading profits	567				
less allowance £225		£ s. d.			
,, children 63	288	£225 @ 2s. 3d. = 25 6 3			
	279	54 @ 4s. 6d. = 12 3 0			
			37	9	3
Less Life Assurance £10 @ 2s. 3d. =			1	2	6
			36	6	9
			£53	4	3

ADDITIONAL ASSESSMENTS.

Under sec. 125 of the Income Tax Act, 1918, additional assessments on undercharges or omissions may be made within three years after the end of the year of assessment. Sec. 29 of the Finance Act, 1923, extends this by giving four years preceding 1924–25, five years preceding 1925–26, and six years thereafter except for executors, etc., where three years after the death is given. In *Rex* v. *Bloomsbury Income Tax Commissioners* (1915) (*a*), it was contended that there was no right in the Inspector to make an additional assessment for a previous year where there was no liability by reason of no trade having been carried on in that year. The assessment was in respect of profits from a London partnership, and the Inspector made the additional assessment under sec. 52 of the 1880 Act (now sec. 125 (1) of the 1918 Act), which empowers him, on discovery that any property or profits chargeable have been omitted from the first assessment or have been undercharged, to certify additional assessments, which are then subject to appeal by the person assessed. The main point at issue was that the person assessed contended that there was no jurisdiction to assess an individual who was not chargeable, while the Crown urged that the correct and only remedy was by appeal in the ordinary course, and that it was for the

(*a*) 3 K. B. 768 ; 31 T. L. R. 565.

assessing authority to decide in the first instance whether a person was assessable to Income Tax. The case was decided in favour of the Crown and the rule of prohibition discharged Lord Justice Reading held that sec. 48 of the 1842 Act (now sec. 107 (2) of the 1918 Act), includes a person who is believed to be liable, and that if the Surveyor has before him information upon which "he could and did honestly believe the person to be liable to the duties, the only remedy is by the appeal prescribed by the statutes." See *Rex* v. *Newmarket Income Tax Commissioners. Ex parte* Huxley (1916) (p. 281), *Turner* v. *Carlton* (p. 18), and *Gundry* v. *Dunham* (p. 19).

CHAPTER V

APPEALS

Procedure of Assessment.—The Schedule D assessments are initially made by the Additional Commissioners (see p. 7) but the Schedule E assessments are made by the General Commissioners. In both cases the Clerk to Commissioners prepares the notices of the amount of assessment, and the question of the address to which such notices should be delivered was raised in *Berry* v. *Farrow*, [1914] (*a*). Sec. 220 (4) of the Income Tax Act, 1918, enacts that :—

> A notice or form which is to be served on a person may be either delivered to him or left at his usual or last known place of abode.

A Schedule E Notice of Charge, following the usual practice, was left at the place of business of the person assessed, but it was held that notice must be given to the person sought to be charged, and that the company's office in question was not a usual or last known place of abode, and that therefore no valid assessment had been made, and a distress was wrongful. The Finance Act, 1915, provided by sec. 36 that any notice or other document to be served or delivered to an employed person may be served by post at his place of employment, while other notices or documents may be served by post in such cases as the Board of Inland Revenue may direct by Regulations. These regulations (continued by sec. 238 of the 1918 Act), provide for service by post of the following :—

(1) Any notice from the assessor requiring a return.

(2) Any notice of assessment and notice of the day for hearing appeals.

(*a*) 1 K. B. 632 ; 83 L. J. K. B. 487 ; 110 L. T. 104 ; 30 T. L. R. 129.

Schedules D and E.—Appeals against Schedules D and E assessments necessitate the giving of notice within the period of *twenty-one days* from the date of the Notice of Charge. The latter notice of the amount of assessment is prepared by the Clerk to the Commissioners, and served in the autumn. It is important however to note that the Commissioners have a wide discretion as regards admitting appeals after the expiration of the legal limit.

Prior to the year 1914-15 the limit was 10 days, not 21 days, but the latter has since been adopted as the limit required by the law.

An example which occurred in practice illustrates the scope of the Commissioners' powers. The secretary of a large limited company, on receipt of the demand note in December, intimated his intention of appealing against the assessment, and was informed by the Inspector of Taxes that the notice of appeal could not then be entertained, as the notice should have been lodged in October (after receipt of the Notice of Charge). The secretary replied that a Notice of Charge had not been received, but a reference to the Assessors' certified list showed that delivery had duly taken place, and the refusal to admit the appeal was repeated. On the secretary pressing the matter with the Commissioners, the latter allowed the appeal, which resulted in a reduction of the assessment.

Legal Limit.—Sec. 136 of the 1918 Act enacts :—

> (1) A person aggrieved by any assessment upon him . . . shall be entitled to appeal to the general commissioners, on giving notice in writing to the surveyor, within 21 days after the date of the notice of such assessment.
>
> (3) If it be shown to the satisfaction of the general commissioners that owing to *absence, sickness or other reasonable cause*, any person has been prevented from appealing in due time, or from attending at the hearing of an appeal on the day fixed for that purpose, they may postpone the hearing of such appeal for such reasonable time as they think necessary.

The admission of a belated appeal is, by the above section, left to the sole discretion of the Commissioners, who are the only judges of the reasonableness of the delay.

When the appellant has removed from the district in which he is assessed he may appeal to the Commissioners for the district into which he has removed. Sec. 136. An owner of lands, &c., is also given the same right of appeal as the occupier.

Verification of Accounts. — The Commissioners may require the verification on oath of accounts or returns, but they are not compelled to put an appellant on oath, neither are they compelled to accept accounts because they are on oath. *R.* v. *Chew and Others* (1894), C. A. (*b*).

Finality of Commissioners' Decision.—The Commissioners' decision on appeal is final, unless a case is demanded (*post*). Sec. 133 (2) of the 1918 Act, reads :—

> An appeal, once determined by the Commissioners, shall be final, and neither the determination of the Commissioners, nor the assessment made thereon, shall be altered, except by order of the Court when a case has been required as provided by this Act.

The Commissioners may increase an assessment on appeal. (Sec. 137 (5) of the 1918 Act.)

Errors.—Sec. 24 of the Finance Act, 1923, gives relief (within three years) for "error or mistake" in the return or assessment, but the following of the general practice at the time cannot give such error. The procedure is by application to the Board of Inland Revenue with right of appeal to the Special Commissioners.

Questions of Fact. —The Commissioners' determination on points of *fact* cannot be reviewed in the Courts provided that there is evidence on which the Commissioners could base their findings of *fact*. The only review by Case Stated (*post*) is restricted to points of *law*.

Dicta on the conclusiveness of Commissioners' findings of fact have been extensively delivered in cases before the Courts.

> "These facts have been ascertained for us, and these facts are so ascertained that I do not think it is competent for us to go out of what has already been determined by the tribunal which the Legislature has considered sufficient to determine the form in which such a question, if it arises, should be determined." EARL HALSBURY, in *Smith* v. *Lion Brewery Co., Ltd.*, H. L. (*c*).

(*b*) 71 L. T. 541 ; 59 J. P. 356 ; 14 R. 74 ; 11 T. L. R. 1 ; 3 Tax Cas. 289.
(*c*) [1909] 2 K. B. 912 ; 78 L. J. K. B. 1089 ; 101 L. T. 145 ; 73 J. P. 447 ; 25 T. L. R. 748 ; 53 Sol. Jo. 696, C. A. ; affirmed, [1911] A. C. 150 ; 80 L. J. K. B. 566 ; 104 L. T. 321 ; 75 J. P. 273 ; 27 T. L. R. 261 ; 55 Sol. Jo. 269 ; 48 Sc. L. R. 1083 ; 5 Tax Cas. 568.

"The Commissioners ought not to state either side out of Court by stating, under the guise of fact, that which is really law." FARWELL, L.J., in *New Zealand Shipping Co., Ltd.* v. *Stephens*, C. A. (*d*).

"It is undoubtedly true that, if the Commissioners find a fact, it is not open to this Court to question that finding unless there is no evidence to support it." The MASTER OF THE ROLLS in *The Gramophone and Typewriter, Ltd.* v. *Stanley* (*e*).

"Now in finding questions of pure fact the tribunal is a tribunal without appeal. It is perfectly true that if it finds facts where there is no evidence, that becomes a matter of law, and we can set aside the finding, but I cannot doubt that there was evidence to support the findings of the first part of paragraph 17, and therefore they must be accepted by us legally and without criticism." FLETCHER MOULTON, L.J.

"The truth is, one is betrayed into discussing a question of fact without remembering that we have no jurisdiction over he question of fact." EARL OF HALSBURY, in *American Thread Co.* v. *Joyce*, H. L. (*f*).

"The Commissioners, after sifting the evidence, arrived at the two following conclusions. . . . These conclusions of fact cannot be impugned, and it follows that this Company was resident within the United Kingdom." The LORD CHANCELLOR, in *De Beers Consolidated Mines, Ltd.* v. *Howe* (*g*).

See also *I. R.* v. *Gas Lighting Improvement Co.* (1922).

A somewhat opposing opinion was expressed by SIR SAMUEL EVANS, in *Usher's Wiltshire Brewery Co.* v. *Bruce*, [1914] C. A. (*h*), that a finding of fact "would by no means settle the question to be determined," and that when the facts are found "the proper inference to be drawn in order to determine whether the disbursements or expenses were wholly and exclusively laid out for the purposes of the trade or concern, within the meaning of the provisions referred to is a question of law," but in *Smith* v. *Incorporated Council of Law Reporting*, [1914] (*i*),

(*d*) (1906), 96 L. T. 50; 23 T. L. R. 213; affirmed (1907), 24 T. L. R. 172; 52 S. J. 113; 5 Tax Cas. 553.

(*e*) [1906] 2 K. B. 856; 75 L. J. K. B. 1031; 95 L. T. 461; 22 T. L. R. 818; affirmed, [1908] 2 K. B. 89; 77 L. J. K. B. 834; 99 L. T. 39; 24 T. L. R. 480; 15 Mans. 251, C. A.; 5 Tax Cas. 358.

(*f*) [1913] 108 L. T. 353; 29 T. L. R. 266; 57 Sol. Jo. 321; 50 Sc. L. R. 665; 6 Tax Cas. 163.

(*g*) [1906] A. C. 455; 75 L. J. K. B. 858; 95 L. T. 221; 22 T. L. R. 756; 13 Mans. 394; 5 Tax Cas. 198.

(*h*) 2 K. B. 891; 83 L. J. K. B. 357; 30 T. L. R. 442.

(*i*) 3 K. B. 674; 83 L. J. K. B. 381; 30 T. L. R. 588; 6 Tax Cas. 477.

Mr. JUSTICE SCRUTTON said that the Commissioners were to decide all questions of fact, from which there was no appeal, and he maintained that the statement of Sir Samuel Evans (*ante*) was an *obiter dictum*. It seemed to him that the question whether money was wholly laid out for the purposes of the adventure, was a question of fact. Moreover, the judgment delivered by SIR SAMUEL EVANS was reversed in the House of Lords (p. 106).

The only remaining question was whether there was evidence upon which they could find that. They found that although there was no legal right to this payment, it had been the habit of the council to make such payments in suitable cases. One could not help knowing that this fact would affect the amount of salary paid to reporters. Therefore there was evidence for the Commissioners to act upon, because the amount of the ordinary salaries might be affected, so that they might come to the conclusion that the payment of the lump sum was for the purposes of the adventure. *It was immaterial whether or not he would come to the same conclusion on those facts.*

In *Youngs, Crawshay & Youngs, Ltd.* v. *Brooke* (1912) (*k*), counsel for the Crown consented to an Order allowing the deductions claimed, as, *on the findings of fact in the case*, the matter was not arguable.

PRESENCE OF INSPECTORS.

An objectionable practice was existent prior to the decision in *Rex* v. *Brixton Income Tax Commissioners and Another* (1913) (*l*). Inspectors of Taxes, acting under sec. 137 (2) of the 1918 Act, which allows an Inspector of Taxes to attend an appeal meeting and to "be present during all the time of the hearing, and *at* the determination of the appeal," would remain in the Commissioners' presence after the appellant had been asked to retire while the Commissioners considered their decision. The injustice of such a proceeding is obvious, as Inspectors of Taxes could, and did, continue their arguments in the appellant's

(*k*) 6 Tax Cas. 93. (*l*) 29 T. L. R. 712; 6 Tax Cas. 195.

absence, and without the latter having an opportunity of replying to contentions, the existence of which he was of course ignorant.

The Inspector's *right* to be present at Commissioners' meetings is limited to *appeal* meetings, therefore they have no power to require admission to, *e.g.* meetings to appoint new Commissioners.

In the above case the Attorney-General, on behalf of the Crown, admitted that the practice was undesirable, and it was held that it should not continue. Inspectors of Taxes were accordingly circularized to discontinue the practice, and the following circular was sent by the Board of Inland Revenue to Clerks to Commissioners :—

" The High Court in a recent case (*The King* v. *The Brixton Income Tax Commissioners and Another*) (*ante*), having ruled, in effect, that under section 57 (7) (c) of the Taxes Management Act, 1880 (now sec. 137 (2)), a Surveyor of Taxes has no more right than any other party to an appeal to be present when the Commissioners are arriving at their decision, instructions have been issued to Surveyors of Taxes not to claim such right unless the other party to the appeal is allowed to be present."

EVIDENCE.

The appellant may produce " lawful evidence " against the assessment, but in *Rex* v. *Offlow General Income Tax Commissioners* (1911) (*m*), on a Schedule A Appeal, the appellant, through his solicitor, desired to call expert evidence in the shape of a professional valuer, but the Commissioners refused to admit such evidence, as they had before them all the evidence they thought necessary. A rule *nisi* for a mandamus to the Commissioners to hear and determine according to law was discharged on the Commissioners " showing cause," as a mandamus would not lie to compel the Commissioners to hear expert evidence.

The mandamus was, however, a wrong proceeding, and the rule would not have been made absolute even though the Commissioners could not have legally refused to hear the expert, as

(*m*) 27 T. L. R. 353.

it is an established principle that a mandamus will not issue where there is a specific legal remedy, and in the case in question the appellant had the option of two legal remedies but did not avail himself thereof. He could have required :—

(*a*) A case to be stated for the opinion of the High Court (*post*), or

(*b*) A valuation by an independent valuer (p. 23).

See also *Rex* v. *Commissioners of Income Tax and Inspector of Taxes for Kingsland* (1922), *Neill* v. *I. R.* (1918), and *Rex* v. *Commissioners for Winchester* (1922).

Professional Representation.

The Commissioners may permit an appellant to be represented either by a Barrister, a Solicitor, or an Accountant who has been admitted as a member "of an incorporated society of accountants," but should they refuse such permission the appeal may be taken to the Special Commissioners, who are compelled to admit such representation.

For 1923–24 onwards the word "may" is altered to "shall" (sec. 25 of Finance Act, 1923).

Special Commissioners.

Appeals may be made either to the District Commissioners or the Special Commissioners, and in the case of the latter, notice of the appellant's intention should be given within the prescribed time limit for acceptance of notices of appeal (see p. 333).

Cases Stated.

A case may be taken to the High Court on a point of *law*.

Sec. 149 of the Income Tax Act, 1918, provides :—

> (*a*) Immediately after the determination by the general Commissioners, or by the special Commissioners of an appeal under this Act, the appellant or the surveyor, if dissatisfied with the determination, as being erroneous in point of law, may declare his dissatisfaction to the Commissioners who heard the appeal.
>
> (*b*) Having declared his dissatisfaction, he may, within twenty-one days after the determination, by notice in writing addressed to their Clerk, require the Commissioners to state and sign a case for the opinion of the High Court thereon.

(*c*) The party requiring the case shall pay to the clerk to the commissioners a fee of 20*s*. for and in respect of the same, before he is entitled to have the case stated.

(*d*) The case shall set forth the facts and the determination of the commissioners, and the party requiring it shall transmit the case, when stated and signed, to the High Court, within seven days after receiving the same.

(*e*) At or before the time when he transmits the case to the High Court, the party requiring it shall send notice in writing of the fact that the case has been stated on his application, together with a copy of the case, to the other party.

The case, which is heard on the Revenue side in the King's Bench Division, may be brought to the Court of Appeal within fourteen days from the time at which the order is signed, entered or otherwise perfected, and from there to the House of Lords within one year, but within two years for Scotland.

It is provided by sec. 149 (4) that the fact that a case is pending shall not interfere with payment of the tax according to the Commissioners' assessment, but, on an assessment being reduced by the Court the overpaid tax is repaid "with such interest (if any) as the High Court may allow." Interest has been allowed at varying rates, such as $3\frac{1}{2}$ per cent. in *Youngs, Crawshay and Youngs* v. *Brooke* (1912) (*n*), 4 per cent. in *Scottish Provident Institution* v. *Allan* (1903) (*o*), and 3 per cent. in *Gresham Life Assurance Society* v. *Bishop*, [1902] (*p*).

The following factors are material to a Case Stated.

(1) The *dissatisfaction* must be expressed "immediately after the determination," as any delay in making the request renders the stating of a case invalid.

(2) The *case* must be demanded within twenty-one days after the Commissioners' determination, and a fee of £1 should accompany the written demand.

(3) Upon receiving the case it must be sent, within seven days, to the King's Remembrancer's Department at the Royal

(*n*) 6 Tax Cas. 393.

(*o*) (1901), 3 F. 874; 38 Sc. L. R. 683; affirmed, [1903] A. C. 129; 72 L. J. P. C. 70; 67 J. P. 341; 88 L. T. 478; 19 T. L. R. 432; 40 Sc. L. R. 605; 5 F. 10; 4 Tax Cas. 591.

(*p*) A. C. 287; 71 L. J. K. B. 618; 86 L. T. 693; 66 J. P. 755; 50 W. R. 593; 18 T. L. R. 626; 4 Tax Cas. 464.

Courts of Justice, and a copy of the case must be furnished to the other party.

See p. 334 as to questions of *fact*.

LIMITATION OF CASES.

A Case Stated applies solely to "appeals" and does not cover "applications" to the Commissioners under, *e.g.* sec. 34 of the 1918 Act, and Rule 3 of the Miscellaneous Rules of Schedule D. See *Furtado* v. *City of London Brewery Co., Ltd.*, [1914] C. A. (p. 73) (*q*).

See p. 23, for Valuation under Schedule A, and appeals, and *Grimes* v. *Lethem* (1898) (*r*).

In *Smith* v. *Williams* (1921) (*s*) an appellant was successful in an appeal and the Inspector requested a case to be stated. The draft case was prepared in June, 1915. The appellant died on 9th November, 1919, at which date the draft case had not been settled. In June, 1920, the solicitor of Inland Revenue sent the draft case to the appellant's executor, who refused to deal with it. It was held that the proceedings did not abate on the appellant's death, and that the executor should be added as respondent.

See also *Tindall* v. *Wright* (1922) (*t*) *re* academic points.

(*q*) 1 K. B. 709; 83 L. J. K. B. 255; 30 T. L. R. 177; 58 Sol. Jo. 270; 110 L. T. 241; 6 Tax Cas. 382.
(*r*) 3 Tax Cas. 622.
(*s*) 126 L. T. 410.
(*t*) 127 L. T. 149.

CHAPTER VI

RELIEF

See also pp. 325–330.

Relief is given in respect of :—

(*a*) Exemption.
(*b*) Earned income.
(*c*) Children.
(*d*) Housekeepers.
(*e*) Dependent relatives.
(*f*) Life assurance premiums.

Prior to 1920–21, in the case of a total income from all sources not exceeding £700, a scale of abatements applied and total exemption attached when the total income did not exceed £130. For years prior to 1915–16 the exemption limit was £160.

For 1920–21 and onwards a different system applies. In the first place, *earned* income (p. 342) is reduced by $\frac{1}{10}$th (up to a maximum reduction of £200), and then charged on the same basis as unearned income. The first £225 of a married man's income or the first £135 of an unmarried man's income is exempt from tax. Allowances are then made for the items (*c*) to (*f*) *ante*, and the first £225 of the remaining balance is charged at half the standard rate and the balance at the full rate. The following example shows this method. Assume a married man with one child under 16 years of age has the following income :—

	£
Salary	800
Dividends	150
War Loan Interest	80
	£1030

The liability for 1923–24 would be :—

			£			
Total income	.	.	1030			
less 10 per cent. of £800 = £80						
Allowance	.	.	225			
Children	.	.	63	368		
				£662		
					£	*s.*	*d.*
i.e. £225	@	2*s.*	3*d.* =		25	6	3
437	@	4*s.*	6*d.* =		98	6	6
£662					£123	12	9

Earned Income.—Sec. 16 of the Finance Act, 1920, provides that earned income shall be reduced by $\frac{1}{10}$th, up to a maximum reduction of £200. This only applies to an *individual*, and, by sec. 17 of the Income Tax Act, 1918, this does not extend to interest or other items which the claimant pays, and although charged on, is able to deduct tax from.

Earned income is defined by sec. 14 (3) of the Income Tax Act, 1918, as being :—

(*a*) Any income arising in respect of any remuneration from any office or employment of profit held by the *individual*, or in respect of any pension, superannuation, or other allowance, deferred pay, or compensation for loss of office, given in respect of the past services of the individual or of the husband or parent of the individual in any office, or employment of profit, or given to the individual in respect of the past services of any deceased person, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance, or deferred pay or not ; and

(*b*) any income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual ; and

(*c*) any income which is charged under Schedule B or Schedule D, or the rules applicable to Schedule D, and is *immediately derived* by the individual from the carrying on or exercise *by him* of his trade, profession, or vocation, either as an individual, or, in the case of a partnership, as a partner *personally acting* therein.

In cases where a wife's profits are deemed to be profits of the husband, any reference in this section to the individual includes either the husband or the wife.

Sec. 33 of the Finance Act, 1922, treats income in respect of Civil List pensions granted under the Civil List Act, 1837, as amended by subsequent enactments, as earned income.

See p. 363, *re* Clergymen.

Incomes of sleeping partners and limited partners are assessed as "unearned" income.

Partner's Capital.—Where a partner makes a loan to the business as distinct from his fixed capital it has been advanced that the interest should be charged as *unearned* income, but there is no relevant distinction between ordinary partner's capital and such loan, as both are advances to the partnership. Moreover, if the partner increased his fixed capital by the amount of the loan the earned relief would attach on the ground of the interest being the product of the partner's personal labours.

Trust Estate.—The question of applicability of the earned income reduction to beneficiaries was raised in *Fry* v. *Shiel's Trustees* (1915) (*a*). Testamentary trustees carried on a business on behalf of two minors who were beneficiaries under a will, and the full net profits were annually paid over to the minors. The trustees owned the business, and the minors, who did not interfere in the conduct of the business and who had no right to the profits, were held not to be entitled to the earned income relief (see p. 280).

See also *M'Dougall* v. *Smith* (1918) (*b*), where a business was carried on by a Curator Bonus for a lunatic ward. It was held that the profits were not earned income.

Conversion to Limited Liability.—The "earned" income provisions operate inequitably in the frequent case of conversion of a partnership to limited liability, as limited companies are assessable solely on the "unearned" basis.

Assuming that a firm, having two partners who had equal shares of the profits, was assessed for 1921-22 on £1600, and that the partners' drawings amounted to £500. The business was converted to limited liability, the two partners being

(*a*) S. C. 159; 6 Tax Cas. 583.
(*b*) 56 Sc. L. R. 90; 7 Tax Cas. 134.

practically the sole shareholders, and the assessable profits, had the change not taken place, are assumed as £1600 for 1922–23. Directors' fees and salaries (to the previous partners) amount to £500.

In arriving at the liability of the firm, no deduction is allowable for partners' drawings or salaries, so that the assessment of £1600 is inclusive thereof. The earned income reduction of 10 per cent. is applicable for 1922–23.

Under limited liability a deduction is allowable for directors' fees and salaries, which are separately assessed under Schedule E (see p. 360), as earned income ; thus the Schedule D assessment would be on £1600 — £500 = £1100, but only the " unearned " basis applies to limited companies, and the assessment would be on the £1100.

The following comparison shows the inequity :—

FIRM.

	Assessment.
	£1600
less ten per cent. . . .	160
	£1440

LIMITED COMPANY.

	Assessment.	
	£500	£
less 10 per cent.	50	
	—	450
		1100
		£1550

This injustice, which equally applies with a sole proprietor adopting limited liability, may, however, be removed by so adjusting the directors' fees and salaries as to absorb, as nearly as possible, the probable profit. Had the directors' fees and salaries in the above example been £1600, there would have been no assessment on the limited company, but assessments aggregating £1440 under Schedule E on the former partners.

Personal Allowance.—This is £225 in the case of a married man whose wife is living with him or wholly maintained by him during the year of assessment, except where he pays

maintenance, and is entitled to deduct tax thereon (p. 272). In the case of an unmarried person the allowance is £135. The allowances are made from the "assessable income," *i.e.* after deducting the 10 per cent. for earned income (secs. 17 and 18 of the Finance Act, 1920). Where the claimant's total income includes *earned* income of his wife, the allowance is increased by $\frac{2}{10}$ths of such earned income up to a maximum addition of £45.

Children.—The relief applies by sec. 21 of the Finance Act, 1920, to children living at the commencement of the year of assessment and, at that date, under 16 years of age or, if over that age, are receiving full-time instruction at any :—

University,

College,

School, or other educational establishment.

The Commissioners may request the Board of Inland Revenue to refer to the Board of Education (Scottish Education Department in Scotland, and LORD LIEUTENANT in Ireland), any dispute as to such children over 16 years of age.

The allowance is :—

£36 for one child, and £27 for each other child.

The allowance extends to :—

(*a*) Children, as above; who are not entitled in their own right to an income exceeding £40 per annum, excluding income from a scholarship, &c.

(*b*) Stepchildren as above.

(*c*) Illegitimate children as above, whose parents have subsequently married each other.

(*d*) Children as above, not belonging to the taxpayer, but in his custody and maintained at his own expense, if no other person, *e.g.* the father, is given the allowance.

See *Jackson* v. *Voss* (1923), where it was held that a child born on 17 July, 1921, was not "living" at 6 April, 1921.

Housekeepers.—A widower is entitled by sec. 19 of the Finance Act, 1920, to an allowance of £45 for a female relative of himself or his wife who resides with him for the purpose of having charge and care of a child of his for whom he has an

allowance, *ante*. This allowance applies in respect of a person who is not such a relative if it is proved by the claimant that there is such relative able or willing to take charge.

The allowance does not apply if any other person has received an allowance for the housekeeper or if the husband of the housekeeper has received the £225 allowance, *ante*.

The above allowance applies to a widow.

Dependent Relatives.—An allowance of £25 is made by sec. 22 of the Finance Act, 1920, to a person who, at his own expense maintains a relative of his or his wife, who is incapacitated by old age or infirmity from maintaining himself or herself, and whose income does not exceed £50 per annum.

This allowance also applies to a claimant who, by old age or infirmity, is compelled to depend upon the services of a daughter resident with and maintained by him or her.

The allowance may be claimed by a female claimant also.

Where two or more persons jointly maintain such a person, the allowance of £25 may be apportioned.

Widowed Mother.—The above allowance applies in the case of the claimant's, or his wife's, widowed mother.

An unmarried man is entitled by sec. 20 of the Finance Act, 1920, to an allowance of £45 if he has living with him his mother (being a widow or separated from her husband) or some other female relative, for the purpose of having the care and charge of a brother or sister of his, for whom an allowance is permissible (children, *ante*), if he maintains the mother or relative at his own expense and no person is given an allowance under any provision for such mother or relative.

Paid-up Shares Issued to Shareholders.—(See *Super Tax*, p. 420.)

LIFE ASSURANCE PREMIUMS.

An allowance is made by sec. 32 of the Income Tax Act, 1918 (as amended by sec. 26 of the Finance Act, 1920), in respect of Life Assurance Premiums. The section provides that—

(*a*) Any person who has made an insurance on **his life or the life of his wife**, or who has contracted for any

deferred annuity on his own life or the life of his wife, with any insurance company legally established in the United Kingdom, or in any British Possession, or lawfully carrying on business in the United Kingdom, or with a registered Friendly Society, or, in the case of a deferred annuity, with the National Debt Commissioners ; and

(*b*) who is under any Act of Parliament *or under the terms or conditions of his employment* liable to the payment of any sum or to the deduction from his salary or stipend of any sum for the purpose of securing a deferred annuity to his widow or provision for his children after his death ;

shall, subject as hereinafter provided, be entitled to have the amount of tax payable by him reduced by a sum representing tax at the appropriate rate on the amount of the premium paid by him for any such insurance or contract or on the amount of the sum paid by him or deducted from his salary or stipend.

For the purposes of this section, the expression "appropriate rate" means—

(i.) Where the total income of the claimant from all sources estimated in accordance with the provisions of the Income Tax Acts does not exceed £1000, half the standard rate of tax ;

(ii.) where the total income of the claimant from all sources estimated as aforesaid exceeds £1000, but does not exceed £2000, three-fourths of the standard rate of tax ;

(iii.) where the total income of the claimant from all sources estimated as aforesaid exceeds £2000, the standard rate of tax.

Restriction of Allowance.—The allowance is restricted to a maximum of one-sixth of the total income and also as follows in order to avoid allowance in respect of policies which are, in reality, pure investments and have no relevant death risk :—

(1) Not more than 7 per cent. of the capital sum assured by a policy for securing a capital sum on death, whether in conjunction with any other benefit or not.

(2) Not more than £100 in all in respect of premiums for securing any other benefits.

"Capital sum on death" is not to include (*a*) any sum payable on the happening of any other contingency, (*b*) the value of premiums agreed to be returned, (*c*) benefit by way of bonus or otherwise, which is to be or may be received before

or after death either by the person paying the premium or not, " and which is not the sum actually assured."

The restriction of 7 per cent. applies to individual policies, not to the aggregate owned by an individual, as this is both consistent with equity and in accordance with the statutory rule which refers to *a* policy.

(3) *Insurances or deferred annuities made after 22nd June*, 1916. No allowance shall—

(*a*) be given at a greater rate than half the standard rate ;

(*b*) be given except for premiums, &c., payable on policies for securing a capital sum on death, whether in conjunction with any other benefit or not ;

(*c*) be given for premiums, &c., payable during the period of deferment in respect of a policy of deferred insurance.

The restrictions (*b*) and (*c*) do not affect (1) premiums, &c., on policies or contracts in connection with a superannuation or *bonâ fide* pension scheme for the benefit of employees or of the wife or widow of any such employee or of his children or other dependants ; (2) premiums, &c., on a policy taken out by a teacher in a secondary school pending the establishment of a superannuation or pension scheme for those teachers.

In *Barton* v. *Miller* (1922), an insurance for £10,000 was made on 30th November, 1915, with the Sun Life Assurance Co., at an annual premium of £350. As about £12 a year could be saved by insuring with the Royal Exchange Assurance Corporation a policy was effected with the latter on 29th August, 1916, but, owing to medical examination having to be made, the policy was not issued until November, 1916, and the old policy remained in force until then. The Court decided that the new policy was restricted (*ante*).

Wife.—Where a wife pays a premium out of her own separate income for an insurance or deferred annuity on her own or her husband's life, the same allowance shall be made as if the premium were paid by the husband (see p. 274).

Marginal Relief.—In the case of a total income slightly below the £1000 or £2000 where the tax payable after allowing

premiums at the above rates is greater than if the total income exceeded £1000 or £2000, the allowance is increased by the excess of tax at one-fourth standard rate on the premiums over tax at the full standard rate on the deficiency of the total income below the £1000 or £2000.

Endowment Policies.—It was decided in *Gould* v. *Curtis*, [1913] C. A. (*c*), that the allowance applies to an endowment policy. Under these policies, which are investments, a lump sum is paid if the assured is alive at the end of a fixed period and the death risk is also covered in the interim. It was also laid down that "insurance on his life" in sec. 32 had no technical meaning, but must be understood as in common parlance "among such persons as were conversant with insurance" at the time of the passing of the Act, and that the term was definable as being an agreement to pay a "given sum upon the happening of a particular event contingent upon the duration of human life."

The allowance is restricted to the cash payments, thus when part of the premium is paid by a loan from the company that part is not deductible. *Hunter* v. *The King*, [1904] H. L. (*d*).

Accident Policies.—No allowance is permissible in respect of accident policies, but when a policy covers accident and life risks, the portion of the premium attributable to the latter is allowed. The company will give the division.

Single Premium Policies.—The allowance by sec. 54 of the 1853 Act (sec. 32 of the 1918 Act) was in respect of the *annual* premium, but sec. 26 of the Finance Act, 1920, omits the word "annual." In *Turton* v. *O'Brien* (1919) (*e*), a person ceased paying annual premiums by paying a lump sum in commutation of such premiums. The Court held that this sum was not allowable as it was not an annual payment under sec. 54.

Partnership Insurance.—Policies are extensively taken out by partnerships to provide, on the death of one partner,

(*c*) 3 K. B. 84; 82 L. J. K. B. 802; 108 L. T. 779; 2 T. L. R. 469; 57 S. J. 461.

(*d*) A. C. 161; 73 L. J. K. B. 381; 90 L. T. 325; 52 W. R. 593; 5 Tax Cas. 13.

(*e*) 7 Tax Cas. 170.

the capital necessary for the survivor to discharge the deceased's share. It has been contended that the premiums are not allowable as the insurance is not "on *his* life" within sec. 32, but that each partner insures the life of the other. In practice, allowance is now made.

(See as to MARRIED WOMEN, p. 272.)

INDIVIDUALS.

Allowances, &c., are restricted to "individuals" and therefore do not apply to, *e.g.* a limited company. *Curtis* v. *Old Monkland Conservative Association* (1906) (*f*) and *Mylam* v. *Market Harboro' Advertiser Co.*, [1905] (*g*).

REPAYMENT.

Where tax is paid by deduction, such as in the case of incomes solely or mainly derived from taxed investments, the applicable relief can be set against such income, and repayment claimed. Thus, if the income of an unmarried person consisted of (*a*) profits of trade £50, (*b*) property £40, and (*c*) dividends £620, giving a total income of £710, the adjustment would be as follows for 1922–23 :—

Liability.	£			
Total income .	710			
less 10 per cent. of £50 = £5 allowance . .	135			
	140			
	570		£	*s.*	*d.*
	225 @ 2*s.* 6*d.* =		28	2	6
	345 @ 5*s.* 0*d.* =		86	5	0
			£114	7	6

The tax paid would be :—		£	*s.*	*d.*
Trade	£45 less £45 allowance . . .	Nil		
Property	£40 „ £40 „ . . .	Nil		
Dividends	£620 @ 5*s.* 0*d.* by deduction . .	155	0	0
		£155	0	0

There would thus be a repayment of £155—£114 7*s.* 6*d.* = £40 12*s.* 6*d.*

(*f*) (1905), 7 F. 119 ; 43 Sc. L. R. 119 reversed [1906] A. C. 86 ; 75 L. J. P. C. 31 ; 94 L. T. 7 ; 22 T. L. R. 177 ; 5 Tax Cas. 189.

(*g*) 1 K. B. 708 ; 74 L. J. K. B. 205 ; 92 L. T. 94 ; 53 W. R. 478 ; 21 T. L. R. 201 ; 5 Tax Cas. 95.

Period of Claim.—Repayment for relief can be claimed for the current tax year ending 5th April, and for 1923-24 the preceding three years, for 1924-25 the preceding four years, for 1925-26 the preceding five years, and thereafter the preceding six years.

Forms of claim are supplied by Inspectors.

(See also p. 411 for repayment generally.)

INCOME AGGREGABLE.

See p. 324 for details of the estimation of income for the purposes of arriving at total income.

No income is to be brought into account on a claim except what is assessable to Income Tax, thus *e.g.*, casual profits on realization of investments or property, and gifts, are not aggregable.

The income for relief is that *assessed for Income Tax purposes for the current year*, and is therefore not the actual income of the year.

Dividends.—Dividends are taken, in the hands of the recipients, as being income for the period during which the profits out of which the dividends have been paid, accrued. (See pp. 192, 388, 411.)

For repayment claims interim dividends are taken as belonging to the year *in* which they are paid, and final dividends to the year *for* which they are paid.

(For "free of tax" dividends and debenture interest, see p. 193.)

Rent Free Residence.—A rent free residence, as *e.g.* that supplied to a Bank Manager, is not to be included in the total income. *Tennant* v. *Smith*, [1892] H. L. (*h*); but if there is a power to convert such benefit of residence into money, by being permitted to let the residence, the exclusion does not apply, and the net Schedule A assessment on the residence is taken as part of the person's income. See *Corke* v. *Fry*, [1895] (*i*), where a manse occupied by a minister of the Established Church in Scotland was held to be aggregable as the minister had power to let.

Partnership Income.—The income from a partnership is

(*h*) A. C. 150; 61 L. J. P. C. 11; 66 L. T. 327; 56 J. P. 596; 3 Tax Cas. 158.

(*i*) 32 Sc. L. R. 341; 22 R. 422; 3 Tax Cas. 335.

the share to which the partner is entitled in the year, of the profits as averaged and assessed for the same year. Sec. 20 (c) (ii) of the Income Tax Act, 1918.

For Super Tax the share in the partnership profits is that for the *preceding* year (sec. 5 of the Income Tax Act, 1918), thus the partnership income for Income Tax purposes for a particular year is the partnership income for Super Tax for the following year. By *Inland Revenue Commissioners* v. *Brooks* (p. 418) the person could prove what his share actually was for the preceding year, based on the average, but this case was statutorily overruled by sec. 18 of the Finance Act, 1915 (now sec. 5 (2) of the 1918 Act), which provides that when an Income Tax assessment for a particular year has become final and conclusive, it shall be conclusive for Super Tax for the following year.

In the division of partnership income between the respective partners the following procedure pertains :—

Assume that the total average profits were £1100, that there is a loan of £2000 at 5 per cent., that depreciation of £100 is allowed, that A has three-fourths of the profits and £150 salary, and B one-fourth and £50 salary, that A receives £120 interest on capital and B £80.

The distribution should be in accordance with the partnership agreement as at the beginning of the tax year, and the interest on capital should be likewise.

	£	£
Assessment . . .	1,100	
less depreciation . .	100	
	£1,000	200 unearned (Loan Int.).
		800 earned (*less* 10 per cent., p. 342).

The net divisible assessment is :

	£	£
		800
less Salaries	200	
„ Interest on Capital . . .	200	400
		400

A.	£	B.	£
¾ of £400 . . .	300	¼ of £400 . . .	100
Salary	150	Salary	50
Interest on capital . .	120	Interest on capital . .	80
	£570		£230
less 10 per cent. . .	57	*less* 10 per cent. . .	23
	513		£207

The shares of the partnership profits are therefore £513 A and £207 B.

See *Gaunt* v. *Inland Revenue Commissioners*, [1913] (*k*), as to Super Tax, where the above principle was followed.

Dissolution of Partnership.—When a partnership is dissolved as to *e.g.* one of the partners, the assessment is primarily divided for the parts of the fiscal year (a) prior to, and (b) subsequent to, dissolution. Assuming that an assessment on three partners A, B, and C for 1922-23 was made at £3000, and that B retired from the partnership on 5th July, 1922, the division would be as follows, the distribution of profits under the partnership agreement having been in equal shares, while, from 5th July, A and C share equally :—

£

(a) To 5th July, 1922 = ¼ of £3000 = 750
(b) From ,, ,, = ¾ of £3000 = 2250

A.	£	B.	£	C.	£
⅓ of £ 750 =	250	⅓ of £750 =	250	⅓ of £ 750 =	250
½ of £2250 =	1125			½ of £2250 =	1125
	£1375		£250		£1375

£3000

See p. 215 for partnerships carried on abroad when one of the partners is resident in the United Kingdom.

RESIDENTS ABROAD.

By sec. 24 of the Finance Act, 1920, no relief can be extended to a person resident out of the United Kingdom for :—

(*a*) earned income ;

(*b*) personal allowances ;

(*k*) 3 K. B. 395 ; 109 L. T. 555.

(*c*) allowances for children, relatives, &c.;

(*d*) life assurance premiums;

(*e*) the reduced rate on the first £225 of taxable income;

except in the following cases :—

(1) a British subject;

(2) a person who is or has been employed in the service of the Crown, or is in the service of a Missionary Society, or native State under British Protection;

(3) a resident in the Isle of Man or the Channel Islands (which are not in the United Kingdom);

(4) a person who has previously resided in the United Kingdom, and is resident abroad for the sake of his health, or the health of a member of his family resident with him (this covers a person who is not a British Subject);

(5) a widow whose late husband was in the service of the Crown.

The liability under sec. 24 is the proportion of the tax, which would be paid if resident in the United Kingdom, that the taxable income bears to the total income from all sources. Assume that a married person with a child under 16 resident in the Channel Islands, and had the following income :—

English dividends	£500
War Loan interest	120
Property in the Channel Islands	250
	£870

The liability, if living in England, would be :—

Total Income		£870	
less allowance	£225		
„ child	36		
	—	261	
		609	
			£ *s.* *d.*
225 @ 2*s.* 6*d.* =			28 2 6
384 @ 5*s.* 0*d.* =			96 0 0
			£124 2 6

The liability would thus be :—

$$\frac{\text{Taxable income } 500}{\text{Total income } 870} \text{ of £124 } 2s.\ 6d. = £71\ 6s.\ 8d.$$

The tax deducted from dividends would be £500 @ 5/- =	£125	0	0
The liability is	71	6	8
Repayment due	£53	13	4

A further claim may be made for Dominion Income Tax relief (*post*) (see also Foreign, p. 209).

DOMINION INCOME TAX RELIEF.

Sec. 27 of the Finance Act, 1920, gives an allowance for income that has borne both United Kingdom Income Tax, and Income Tax in any British Possession or territory under Crown protection or for which a mandate is being exercised by the government of any part of His Majesty's dominions.

The relief is :—

(*a*) The full Dominion tax if the Dominion rate does not exceed half of the "appropriate rate of the United Kingdom tax."

(*b*) In other cases, half of the "appropriate rate."

The term "appropriate rate of United Kingdom tax" is the rate at which the claimant is liable to United Kingdom Income Tax, and Super Tax. The rate is, for Income Tax, arrived at by dividing the tax payable in the United Kingdom (before allowance of life assurance premiums) by the "taxable" income. The "taxable income" is after deduction of Personal Allowance, and other allowances (p. 344). The "appropriate" rate for Super Tax is determined by dividing the Super Tax payable by the total income for Super Tax purposes.

Assume that a total income of a married man with two

children residing in the United Kingdom is £1250 the appropriate rate would be arrived at as follows :—

Tax payable		£1250	
less allowance . . .	£225		
„ children . . .	63		
	—	288	
		962	
		225 @ 2*s.* 6*d.*	= £28 2 6
		737 @ 5*s.* 0*d.*	= 184 5 0
			£212 7 6

The appropriate rate is thus :—

$$\frac{\text{Tax payable}}{\text{Taxable income}} \quad \frac{\text{£212 7 6}}{\text{£962}} = 4s.\ 5d.$$

The maximum allowance would be 2*s.* 2½*d.* in the £.

The " Dominion rate of tax " is arrived at by dividing the Dominion Income Tax by the income in respect of which the Dominion tax is charged.

Where the Dominion tax is not charged on the " ascertained amount of the actual profits " the Dominion rate is to be ascertained by the Special Commissioners.

If, *e.g.* tax was paid in a Dominion on £250 income from property at 2*s.* 6*d.* in the £, there would be a maximum relief of £250 at 2*s.* 2½*d.* in the £.

In the case of dividends paid by an English Company out of profits which have borne a Dominion tax, the applicable relief is given to the company, and sec. 27 (5) provides that the tax deducted from the dividends shall be at a rate not exceeding the United Kingdom rate as reduced by relief given under sec. 27. (See Cases, *post.*)

The following points are governed by sec. 27 :—

(1) If the rate deducted from dividends gives a greater relief than the individual recipient would be entitled to, the necessary adjustment is made in arriving at the recipient's ordinary liability. Owing to a recipient's income being small or his allowances large his " appropriate rate " of United Kingdom

tax may be small and the relief due cannot exceed half his appropriate rate.

(2) For assessment purposes in the United Kingdom on the income from the Dominion the gross income before deducting tax paid in the Dominion has to be charged (see p. 209). If the income is entrusted to a person in the United Kingdom for payment (p. 369) and he cannot readily ascertain the amount to be added, the recipient may be charged direct under Case 6 of Schedule D (p. 66). If the particular Dominion makes no allowance for payment of United Kingdom tax, a deduction may be made of the excess of the Dominion tax over the relief allowed.

(3) The Board of Inland Revenue may prescribe the Dominion fiscal year which is to be taken as corresponding to the United Kingdom year of assessment.

(4) " Dominion Income Tax " covered by sec. 27, is any Income Tax or Super Tax which appears to the Special Commissioners to correspond with United Kingdom Income Tax or Super Tax.

Claims are to be made to the local Inspector of Taxes in the case of residents in the United Kingdom, and the Board of Inland Revenue in the case of non-residents. In the latter case, claims are dealt with by the Chief Inspector of Taxes, Cecil Chambers, Strand, W.C.

Non-residents.—In the case of non-residents, the relief is given on the incomes liable to United Kingdom tax, after deducting the proportion of the allowances (p. 344) applicable to the particular total income that the liable income bears to the total income. If the example on p. 356 were that of a non-resident, and the total income of £1250 included £500 liable to United Kingdom tax, the relief would be on :—

	£
Liable income . .	500
less $\frac{500}{1250}$ of allowances of £288 =	115
	£385

Shipping.—Sec. 18 of the Finance Act, 1923, provides for relief where tax has also been paid in a Foreign State and that State has also given relief. "Shipping" includes a "charterer."

Preference Dividends.—Sec. 27 (5) of the Finance Act, 1920, restricts deduction of tax from dividends to the standard rate as reduced by the relief allowed under sec. 27. Prior to the passing of this provision, *Rover* v. *South African Breweries* (1918) (*l*), held that the *full* rate could *not* be deducted from dividends, and *Scottish Union and National Insurance Co.* v. *New Zealand and Australian Land Co.* (1920) (*m*), held in the House of Lords that the *full* rate could be deducted from *preference* dividends. *Wakefield* v. *Whiteaway, Laidlaw & Co.* (1921 (*n*), held that sec. 27 (5) did not cover preference dividends. *Sheldrick* v. *South African Breweries* (1922) held, in the Court of Appeal, that preference dividends are within sec. 27 (5), and that preference shareholders are entitled to the relief.

INCREASE OF RATE DURING THE YEAR.

The Finance Act, 1914 (Session 2), introduced an increased rate after the original rate for the year had been fixed, and it provided that both Income Tax and Super Tax rates should be doubled, but for 1914–15 only one-third of the increase was applicable. Sec. 12 (1) provided that in order to provide for the collection "for the last four months of the current income-tax year" at double the prior rates, any assessments to Income Tax or Super Tax made at the time of the passing of the Act (27th November, 1914) should be treated as increased by one-third, and any assessments not then made were to be made in an amount one-third more than the previous amount. This did not give a rate of 1*s.* 3*d.* to 5th December, 1914, and 2*s.* 6*d.* from that date, but an *average* rate of 1*s.* 8*d.* for the fiscal year 1914–15 as was shown by the provisions of sec. 12 that such deductions should be made (p. 388) from dividends,

(*l*) 2 Ch. 233; 87 L. J. Ch. 516; 119 L. T. 481; 34 T. L. R. 478; 62 S. J. 636.
(*m*) 124 L. T. 225.
(*n*) 127 L. T. 120.

rents, etc., due or payable after 5th December, 1914, as would make the total amount deducted "for the year equal to that which would have been deducted if income-tax for the year had been at the rate of 1*s.* 8*d.*" Moreover, the section also enacted that where income-tax is payable in respect of part only of a year, the tax "shall be deemed to be at the rate of 1*s.* 8*d.*" The Regulations authorized by the Act also provided accordingly.

1915–16.—Under the Provisional Collection of Taxes Act, 1913 (p. 389), the *primâ facie* 1915–16 rate, until the resolution of the Committee of Ways and Means, was double the original 1914 rates, and this was actually followed in the Finance Act, 1914, but the Finance (No. 2) Act, 1915, passed on 23rd December, 1915, provided that, on the same procedure as that introduced by the Finance Act, 1914 (Session 2), the 1915–16 *average* rate for the year shall be arrived at by adding 40 per cent. for six months, *i.e.* an addition of one-fifth for the year, while for 1916–17 the *full* 40 per cent. attached until or unless statutorily amended.

CHAPTER VII

SCHEDULE E

SCHEDULE E covers salaries and fees derived from public appointments, and positions held under public companies and institutions, and, by sec. 18 of the Finance Act, 1922, offices, employments and pensions previously chargeable under Schedule D.

Schedule E of the Income Tax Act, 1918, enacts :—

> The tax shall be paid in respect of all the public offices and employments of profit within the United Kingdom, or by the officers hereinafter respectively described, namely—
>
> (*a*) offices belonging to either House of Parliament ;
>
> (*b*) offices belonging to any court of justice in the United Kingdom, whether civil, criminal, ecclesiastical, naval, military or air force ;
>
> (*c*) public offices under the civil government of the Crown ; or in any county palatine, or the Duchy of Cornwall ;
>
> (*d*) officers in His Majesty's Navy ;
>
> (*e*) commissioned officers in His Majesty's military forces ;
>
> (*f*) commissioned officers in His Majesty's air force ;
>
> (*g*) offices or employments of profit under any ecclesiastical body ;
>
> (*h*) offices or employments of profit under any company or society, whether corporate or not corporate ;
>
> (*i*) offices or employments of profit under any public institution, or on any public foundations of whatever nature, or for whatever purpose established ;
>
> (*j*) offices or employments of profit under any public corporation or local authority, or under any trustees or guardians of any public funds, tolls, or duties.
>
> (*k*) all other public offices or employments of profit which are of a public nature.

Sec. 18 of the Finance Act, 1922, provides that profits from an office, employment or pension (other than those chargeable under Case 5 of Schedule D (p. 207) and Indian pensions, etc., under Rule 7 of the Miscellaneous Rules of Schedule D) shall

be charged under Schedule E, thus substituting the basis of the income of the year of assessment for that of the average of the three preceding years. This section is subsequent to *G. W. R.* v. *Bater* (1922), 127 L. T. 170, which held that railway clerks were under Schedule D. Sec. 18 (3) provides that Rule 7 of Schedule E shall apply to *all* offices, employments and pensions under railway companies.

Sub-sec. 6 provides that the above applies to *any* assessment which is made or becomes final after 1st May, 1922.

Basis of Assessment.—The usual basis of assessment in practice is that of the current tax year to the 5th April.

The assessment is based by Rule 1 on "all salaries, fees, wages, perquisites, or profits whatsoever therefrom for the year of assessment after deducting the amount of duties or other sums payable or chargeable on the same by virtue of any Act of Parliament," where the same have been really and *bonâ fide* paid and borne by the party to be charged.

(See *Hudson* v. *Gribble*, p. 368.)

Superannuation Funds.—See p. 308.

Additional Assessments.—Rule 5 provides that if a person becomes entitled to additional remuneration during the year of assessment an additional assessment may be made.

Reduction of Assessments.—Sec. 18 (5) of the Finance Act, 1922, provides that, if the assessment for a year exceeds the remuneration of that year, an adjustment or repayment may be made.

Appeals.—Sec. 19 of the Finance Act, 1922, allows an appeal to the Special Commissioners.

Place of Assessment.—By Rule 18 (5) of Schedule E (as amended by sec. 18 of the Finance Act, 1922), the assessment may be in the parish where the person ordinarily resides or is employed.

Commission.—See p. 159 as to the basis of ascertaining the amount of commission on profits.

Leave Pay.—Sec. 17 of the Finance Act, 1923, charges under Schedule E, leave pay of Crown officials (and pensions) not payable out of the public revenue of Great Britain or N. Ireland.

Deductible Expenses.—Rule 9 of Schedule E enacts :—

> If the holder of an office or employment of profit is **necessarily obliged** to incur and defray out of the emoluments thereof the expenses of travelling in the performance of the duties of the office or employment, or of keeping and maintaining a horse to enable him to perform the same, or otherwise to expend money **wholly, exclusively,** and **necessarily** in the performance of the said duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed.

By Rule 2 of the General Rules to all Schedules provision is made for deduction, by clergymen or ministers of any religious denomination, of expenses incurred, "**wholly, exclusively, and necessarily** in the performance of his duty," and it has been held in *Lothian* v. *Macrae* (1884) (*a*), that deduction is restricted to sums necessarily expended in the *personal* performance of the duty, and that therefore allowance could not be made to a minister for payments made to an assistant, rendered necessary owing to the minister's advanced age.

The following expenses of a minister of religion are allowable under Rule 2 (*ante*) :—

(*a*) Expenses of visiting members of congregation, resident in parish or not.

(*b*) Expenses of attending church meetings where part of duty required by superiors.

(*c*) Stationery.

(*d*) Communion expenses.

A deduction is not allowable for books.

Charlton v. *Commissioners of Inland Revenue* (1890) (*b*).

Removal Expenses.—In *Friedson* v. *Glynn-Thomas* (1922) it was held that removal expenses of a curate from one curacy to another could not be deducted.

Clothing Allowance.—In *Fergusson* v. *Noble* (1919) (*c*) a detective had a cash allowance for clothing. The amount of

(*a*) 22 Sc. L. R. 219 ; 12 R. 336 ; 2 Tax Cas. 65.
(*b*) 27 Sc. L. R. 647 ; 17 R. 785.
(*c*) 2 Sc. L. T. 49 ; 7 Tax Cas. 176.

the allowance is fixed by reference to the free allowance to uniformed men and the clothing to be purchased is specified and subject to approval. The allowance is not treated as income for superannuation purposes and, apart from the allowance, the rates of pay are the same as for uniformed men. It was held that the allowance was assessable. LORD SALVESEN held that the allowance was under Rule 1, and that the detective got the allowance because he was a detective, and that the inability to spend it as he pleased was not conclusive. The view that, if the clothes had been ordered by the employers and paid for by them, there would not have been liability was supported by the Court.

Tax-free Salaries.—In *North British Railway* v. *Scott* (1922) the company did not exercise its statutory right of deducting tax from salaries of certain of its officials. Assessments were made on such sums as would, after deduction of tax, give the net amounts paid to the officials. The House of Lords held that this was a correct procedure.

Dividends as Remuneration.—See p. 194.

See also *Cowan* v. *Seymour*.

Rent.—See pp. 83, 101, for deduction in respect of rent of part of a dwelling-house used for professional purposes and by clergymen. Sec. 22 of the Finance Act, 1919, provides that, where a minister occupies a house rent free by virtue of his office and the annual value is not part of his income (*i.e.* where he has no power to sub-let) he may require the net annual value to be treated as earned income of the minister.

Travelling Expenses.—An allowance is not permissible for the expenses of travelling between the residence of the person assessed and the place of business.

In *Revell* v. *Directors of Elworthy Bros. & Co.* (1890) (*d*), it was held to be inadmissible to deduct directors' expenses of travelling from their residences to the place of meeting of the company, and in *Cook* v. *Knott* (1887), (*e*) a similar restriction

(*d*) 55 J. P. 392; 3 Tax Cas. 12.
(*e*) 4 T. L. R. 164; 2 Tax Cas. 246.

was placed upon a solicitor who had an appointment at Bromyard and practised at Worcester, and was not allowed to deduct the expenses of travelling between the two places.

Where, however, a director or other person has to travel to more than one place of meeting or business of the same company the above decisions are inapplicable, as it cannot be urged that the expenses are incurred for the personal reasons of the taxpayer, such *e.g.* as to take residence in a rural district. The expenses to be allowed should be the gross, less such part thereof as would cover travelling between the residence and the *nearest* place of business. Alternatively the claim could relate *solely* to the *full* cost of travelling between the residence and the more remote place of business, provided that, if the distance is greater than that between the two places of business, the cost applicable to the latter distance be substituted.

Domestic Assistance.—In *Bowers* v. *Harding*, [1891] (*f*) a schoolmaster and his wife held appointments at a joint salary as master and mistress of a school. A deduction was claimed in respect of the cost of a domestic servant, which expense was necessary in view of the absence from the home of the wife, but the deduction was held to be inadmissible.

Public Salaries.—The following provision (now Rule 10 of Schedule E) was introduced in 1913 to legalize a deduction from salaries of members of Parliament, in respect of travelling expenses, etc., as it was urged that under Schedule E, such deduction, which had been allowed in practice, was illegal.

> Where the Treasury are satisfied with respect to any class of persons in receipt of any salary, fees, or emoluments **payable out of the public revenue** that such persons are obliged to lay out and expend money wholly, exclusively, and necessarily in the performance of the duties in respect of which such salary, fees, or emoluments are payable, the Treasury may fix such sum, as in their opinion represents a fair equivalent of the average annual amount laid out and expended as aforesaid by persons of that class, and in charging the tax on the said salary, fees, or emoluments, there shall be deducted from the amount thereof the sums so fixed by the Treasury, provided that if any

(*f*) 1 Q. B. 560; 60 L. J. Q. B. 474; 64 L. T. 201; 55 J. P. 376; 39 W. R. 558; 3 Tax Cas. 22.

person would, but for the provisions of this rule, be entitled to deduct a larger amount than the sum so fixed, that sum may be deducted instead of the sum so fixed.

Engine Drivers are not assessable under Schedule E, but under Schedule D. *A.-G.* v. *Lancashire and Yorkshire Railway Co.* (1864) (*g*). A College Bursar is assessable direct under Schedule E. *Langston* v. *Glasson*, [1891] (*h*).

Employment Abroad.—In *Pickles* v. *Foster*, [1913] (*i*), the employment was in the service of an English company, but exercised in West Africa. The person assessed *had a residence in England*, but the employment was held not to be assessable under Schedule E, as an office or employment under a public Corporation or Company or society, *exercised abroad*, is not within the scope of Schedule E (see *post*).

See also *Pickles* v. *Foulsham* (1923), where *Thomson* v. *Bensted* (*post*) was supported. It was held that the employment agreement was not a "possession" under Case 5 (p. 207).

In *Thomson* v. *Bensted*, [1918] (*k*), the appellant was employed by a Liverpool company as agent in Southern Nigeria. In the year of assessment he was serving under a separate agreement for each journey to Nigeria, and a condition was that he should remain in Nigeria during the period of the agreement. On return to the United Kingdom he ceased to be in the company's service. During the year of assessment he was the rated owner of a residence in the United Kingdom where his wife and family resided, and he was there during four months of the year of assessment. During his absence abroad part of his remuneration was paid to his wife, and the balance, less sums expended abroad, was received by him in the United Kingdom. The assessment was made under Case 2 of Schedule D, or alternatively Case 6 (now Schedule E).

It was held that he was resident in the United Kingdom

(*g*) 2 H. & C. 792; 33 L. J. (EX.) 163; 10 L. T. 95; 10 Jur. (N.S.) 705; 13 W. R. 8.

(*h*) 1 Q. B. 567; 60 L. J. Q. B. 356; 65 L. T. 159; 55 J. P. 567; 39 W. R. 476; 3 Tax Cas. 46.

(*i*) 1 K. B. 174; 82 L. J. K. B. 121; 29 T. L. R. 112; 20 Manson 106; 6 Tax Cas. 131.

(*k*) 56 Sc. L. R. 10; 7 Tax Cas. 137

during the year of assessment and was liable on the remuneration received in the United Kingdom by his wife and himself. The Lord Justice Clerk held that the appellant "did reside during the *whole* year, in the sense of the said Acts, where that house was," and that it was settled that a man may reside "at one time in more than one place."

(See also pp. 203–236.)

Easter Offerings.—Easter offerings are assessable under Schedule E. *Blakiston* v. *Cooper*, [1909] H. L. (*l*). The offerings in question consisted mainly of collections, the balance being derived from sums sent either to the Vicar direct or to the Churchwardens.

The Bishop of the Diocese issued an appeal to the Churchwardens on account of the under-payment of clergy, requesting that the collections on Easter Day should be devoted "to the personal use of the Incumbent, and this as a personal, non-official, freewill gift."

The Churchwardens had the following notice placed in the pews :—

> "With the sanction of the Bishop of the Diocese and to meet the wishes of the congregation, the collections to be made on Easter Sunday, together with any further sums that may be sent to us, will be handed to Mr. Blakiston for his personal use as a freewill offering to him personally, and all sums given in the collection or sent to us afterwards will be given and sent on that understanding only."

The LORD CHANCELLOR said :—

> "In my opinion, where a sum of money is given to an Incumbent substantially in respect of his services as Incumbent, it accrues by reason of his office. Here the sum of money was given in respect of those services. Had it been a gift of an exceptional kind, such as a testimonial, or a contribution for a specific purpose, as to provide for a holiday, or a subscription peculiarly due to the personal qualities of the particular clergyman, it might not have been a voluntary payment for services, but a mere present."

LORD ASHBOURNE admitted that people were urged to

(*l*) A. C. 104 ; 78 L. J. K. B. 135 ; 100 L. T. 51 ; 53 Sol. Jo. 149 ; 25 T. L. R. 164 ; 5 Tax Cas. 347.

subscribe as a personal, freewill gift, and that the contributions were entirely voluntary and the amount regulated entirely by the discretion of the subscribers.

> "But in what character did the Appellant receive them? It was suggested that the offerings were made as personal gifts to the Vicar as marks of esteem and respect. Such reasons no doubt played their part in obtaining and increasing the amount of the offerings, but I cannot doubt that they were given to the Vicar as Vicar, and that they formed part of the profits accruing by reason of his office."

In *Turton* v. *Cooper* (1905), (*m*) part of the collection taken in Church was given as Easter Offerings to the Incumbent, but the gift would not have been made had he not been poor.

It was held that the gift was not given as additional remuneration on account of personal poverty and was not assessable. CHANNELL, J., cited and approved an opinion of the MASTER OF THE ROLLS in *Herbert* v. *McQuade* (*n*) that—

> "Broadly, are they designed to be gifts to persons who happen to be poor whilst they are in occupation of benefices which are also poor, or are they primarily intended to augment the allotted stipends attached to particular benefices without special personal reference to the Incumbent for the time being?"

That opinion, said MR. JUSTICE CHANNELL, meant that if the gifts were in the 1st category they were not taxable, but if in the 2nd they were taxable.

Free-will Offerings and Grants.—The assessability of grants and free-will offerings to clergymen is determined by the question whether the offering or grant accrues to the clergyman by virtue of his office.

Grants from the **Norwich Diocesan Branch of the Queen Victoria Clergy Sustentation Fund** are assessable, but grants from **Archdeacon Moore and Tyrell Selwyn Funds** are not assessable.

(*m*) 92 L. T. 863; 21 T. L. R. 546; 5 Tax Cas. 138.
(*n*) [1902] 2 K. B. 631; 71 L. J. K. B. 884; 87 L. T. 349; 66 J. P. 692; 18 T. L. R. 728; 4 Tax Cas. 489, C.A.

Personal gifts which are not emoluments of the office of clergymen are not assessable.

Grants from the **Curates' Augmentation Fund** in respect of lengthy service are not assessable.

Provident Funds.—In *Smyth* v. *Stretton* (1904) (*n*), a sum of £35 was annually placed to the credit of an assistant master by the governors of a college, under a Provident scheme. No part of the sum was payable until the assistant master left the college or died, and one moiety was contingent on good conduct and length of service.

It was held that the whole sum was assessable.

In *Hudson* v. *Gribble*, [1903] (*o*), a Corporation was authorized, under a thrift scheme, to make deductions from salaries. The contributions were returnable to the employee, except in cases of fraud or dishonesty, either by superannuation or in a lump sum with interest in the event of death or retirement. It was held that the sums in question could not be deducted. (See p. 308.)

Bank Agents.—See p. 369.

(*n*) 90 L. T. 756; 53 W. R. 288; 20 T. L. R. 443; 5 Tax Cas. 36.
(*o*) 1 K. B. 517; 72 L. J. K. B. 242; 88 L. T. 186; 51 W. R. 457; 4 Tax Cas. 522.

CHAPTER VIII

SCHEDULE C

This Schedule, which covers assessment by deduction, extends to "all profits arising from interest, annuities, dividends, and shares of annuities payable out of **any public revenue.**"

(See Chapter XI. for exemptions under Schedule C, and p. 391 for Rates of Deduction of Tax.)

Agents.—When foreign and colonial dividends, etc., payable out of public revenue are entrusted to an agent for payment, the agent has to render accounts to the Revenue and assessments are made on the agent, who deducts tax when making the payments.

(See p. 222.)

The above provision is extended to cover dividends from stocks or shares of foreign or colonial companies.

The person "entrusted with the payment" includes, by Rule 7 of Schedule C, the following :—

(*a*) Any person having the ordinary custody of any book, or making any list ordinarily kept in the United Kingdom, wherein the right or title of the person to whom the payment is to be made is shown by the registration or entry of his name ;

(*b*) Any banker, or person acting as a banker, who sells or otherwise realizes coupons for any dividends (save such as are payable in the United Kingdom only), and pays over the proceeds to any person or carry the same to his account ;

(*c*) Any person who, by means of coupons received from any other person, or otherwise on his behalf, obtains payment of any dividends elsewhere than in the United Kingdom ;

(*d*) Any dealer in coupons who purchases coupons for

any dividends (save such as are payable in the United Kingdom only) otherwise than from a banker or person acting as a banker, or another dealer in coupons.

By sec. 24 (2) of the Customs and Inland Revenue Act, 1888, the word " coupons " in (*b*) and the expression " coupons for any dividends " in (*c*) are to include " warrants for or bills of exchange purporting to be drawn or made in payment of any dividends."

Remuneration of Agents.—A person entrusted with payment of dividends is entitled to receive as remuneration a rate fixed by the Treasury at not less than 13*s.* 6*d.* for every £1000 of dividends paid.

Securities during the War.—Sec. 47 of the Finance (No. 2) Act, 1915 (included in sec. 46 of the 1918 Act), allowed the Treasury, during the continuance of the war and for a period of twelve months thereafter, to issue any securities—which they are empowered to issue for raising any money or loan—with a condition that neither capital nor interest shall be liable to taxation, either present or future, so long as the securities are in the beneficial ownership of persons neither domiciled nor ordinarily resident in the United Kingdom.

CHAPTER IX

ADJUSTMENTS

Adjustments of assessments are permitted *inter alia* in respect of:

(1) Setting-off a loss on one concern under Schedule D against the profits of another concern under the same Schedule and in the same ownership.

(2) Setting-off a loss under Schedules B, D or E on the profits of the current year, against taxed income under any Schedules.

Adjustments are also allowed by Rule 3 of the Miscellaneous Rules of Schedule D (p. 69), and Rule 11 to Cases 1 and 2 of Schedule D (p. 69), and for "Commencement," p. 52, and "Discontinuance," p. 54.

(1) Rule 13 of Cases 1 and 2 of Schedule D.

The claim under this section should be made when the annual return is rendered, as it is not, on a strict interpretation, an *appeal* section but an *assessment* section.

> A person who carries on, either solely or in partnership, two or more distinct trades the profits of which are chargeable under the rules of this Schedule, may deduct from or set-off against the profits as computed under this Act in respect of one or more such trades, the loss so computed sustained in any other such trade.

Assume that a person has two *distinct* businesses, one coal selling, and the other that of general merchant, that the profits were as follows, and that it was desired to compute the liability for 1922–23.

Coal.	£	£	Merchant.	£
Year to 31st Dec., 1919 .		428	Year to 29th Sept., 1919	824
„ „ 1920 .	loss 650		„ „ 1920	652
„ „ 1921 .		42	„ „ 1921	976
		470		
	less	650 loss		
		3)180 loss		3)2452
	Average loss	£60	Average profit	£817

The assessments would, apart from the operation of Rule 13, be made on *nil* for the coal business, and £817 for that of merchant, but under the provisions of Rule 13, the loss of £60 could be set off (on the annual Return Form) against the profit of £817, and the assessment on the business as merchant would be made at £757.

The set-off is also applicable to the case of one Company owning all the shares in another Company and one of the Companies making a loss.

The reduction received would operate to give "relief."

Sec. 101 (now Rule 13) has been held to be inapplicable to concerns in No. III. of Schedule A (p. 56), which comprises mines, gasworks, waterworks, etc.

The question was raised in *Wakefield Rural District Council* v. *Hall*, [1912] C. A. (*a*) (see also p. 60). The Council supplied water to several parishes in its area and was compelled by law to keep separate accounts for each parish. The water was purchased by the Council, which controlled a distributing system of mains and pipes, the mains being to a material extent common to all the contributory parishes. Losses were sustained in some of the parishes and profits made in others. The Council contended that the assessment should be made on :—

(*a*) The net profit of the whole supplies to the several parishes, or, alternatively,

(*b*) That if the supplies to the several parishes were separate

(*a*) 3 K. B. 328 ; 81 L. J. K. B. 1201 ; 107 L. T. 138 ; 76 J. P. 437 ; 28 T. L. R. 589 ; 10 L. G. R. 1002 ; 6 Tax Cas. 181.

concerns the losses should be set against the profits under sec. 101.

It was held as regards (*b*) that sec. 101 did not apply to concerns under No. III. of Schedule A, but the 1918 Act made sec. 101 a *rule* of Schedule thus giving a set-off. (See p. 60.)

See in *re Corporation of Birmingham*, p. 297.

In *Grove* v. *Y. M. C. A.* (1903) (*b*), the Association carried on a restaurant which was open to the general public and was conducted on ordinary commercial principles. Educational classes, gymnasiums, etc., were also carried on, and it was sought to set-off losses on the latter against the profits of the restaurant.

It was held that the profits of the restaurant were assessable, and that the set-off could not be made as the other branches were not *trades*, and that Rule 13 requires the loss of one *trade* to be set-off against the profits of another *trade*.

In *Religious Tract and Book Society of Scotland* v. *Forbes* (1896) (*c*), the Society sold Bibles, etc., at a shop, and also sent out colporteurs who sold Bibles and acted in the capacity of cottage missionaries. A profit was made on the shop, but a loss resulted from the colporteurs, and it was claimed that the loss should be set-off against the profits.

It was held that the set-off could not be made, as the colportage was not a trade.

(2) **Sec. 34 of the Income Tax Act, 1918.**—This section is of extensive operation in practice, but its benefits, as will be seen *post*, are not of universal advantage to the taxpayer. The effect of the section is to allow a loss to be set off at once instead of being allowed by falling into future averages.

Sub-section (1) reads—

> Where any person sustains a loss in any trade, profession, employment, or vocation carried on by him either solely or in partnership, or in the occupation of lands for the purpose of husbandry only, or in the occupation of woodlands in respect

(*b*) 88 L. T. 696; 67 J. P. 279; 19 T. L. R. 491; 4 Tax Cas. 613.
(*c*) 33 Sc. L. R. 289; 3 Tax Cas. 415.

> of which he has elected to be charged to tax under Schedule D, he may, upon giving notice in writing to the surveyor **within six months after the year of assessment,** apply to the General Commissioners, or to the Special Commissioners, for an adjustment of his liability by reference to the loss and to the aggregate amount of his income for that year **estimated according to this Act.**

(*a*) The loss is a loss on the current trading year, thus, if the accounts made up to the 31st December, 1922, were to show a loss, that loss could be dealt with under sec. 34 for the year of assessment 1922–23.

(*b*) The application must be made in *law* within six months after the end of the year of assessment, but, in *practice*, the time limit was extended to twelve months. Sec. 30 (3) of the Finance Act, 1923, now gives twelve months.

Sub-section (2) reads—

> The commissioners shall, on proof to their satisfaction of the amount of the loss, and of the payment of tax (*a*), upon the aggregate amount of income, give a certificate authorizing repayment of so much of the sum paid for tax as would represent the tax upon income equal to the amount of loss.
>
> The certificate extends to any " relief."

(*a*) Form 79A is provided by Inspectors of Taxes for setting out particulars of the income which has borne tax in the year of assessment to which the claim relates, and receipts for the tax should be annexed thereto. It is, however, only necessary to insert on the form, and to furnish receipts for, taxed income which equals the amount of loss, thus, if the loss does not equal the total taxed income the whole of the latter need not be inserted.

(*b*) If the loss shown by the accounts to 31st December, 1922, were £100, and tax had been paid on, *e.g.* property and dividends to the amount of £800, repayment would be made in respect of £100.

If the accounts for 1922 showed a loss of £100 and the assessment for 1922–23 had been made, on the average, at £200, the effect of sec. 34 would not be to discharge the whole assessment, but only to repay tax on the amount of loss, viz. £100.

Sub-section (4) reads :—

> Where repayment has been made to a person for any year under this section, he shall not be entitled, in computing the amount of the assessment for any subsequent year, to a deduction of any portion of the amount in respect of which such repayment has been obtained.

This sub-sec. prevents a loss being allowed twice, once by repayment under this section, and again in the subsequent averages, thus :—

(1) If, in 1922–23, a loss of *e.g.* £100 is set-off against assessed trading profits of £100 or more, the profits of the 1922 trading year in the averages of the following three years would appear as *nil*.

(2) If a loss of £800 occurred and only £600 was set-off against profits and taxed income, a loss of £200 for 1922 would appear in the average.

Succession.—On a succession (p. 68) the allowed loss should *not* be excluded, as sub-sec. (4) only applies to the case of "*a person*" having been allowed repayment, and provides that "*he*" shall not have the benefit of the loss in future averages. The provision is thus *personal* to the particular trader.

Example of Working.—The following example relating to the year of assessment 1922–23, illustrates the working of sec. 34.

A person in trade—an unmarried man—whose accounts were made up to 31st December annually, made profits, as adjusted for Income Tax purposes (p. 322), as follows :—

	£	
Year to 31st December, 1919 . .	846	average = £646.
„ „ „ 1920 . .	672	
„ „ „ 1921 . .	420	
„ „ „ 1922 .	loss £348.	

Other sources of income are taxed Dividends £550 (*including* tax deducted), Property £175, and Mortgage Interest £95 (including tax deducted), thus the total assessable income would be £1402 (£820 "unearned," and £582 average of the three preceding years, "earned" less 10 per cent.).

Tax would be initially payable as follows for the year 1922–23 (p. 341).

		£
Total income . .		1466
less 10 per cent. of £646	£64	
allowance . .	135	
	—	199
		1267

	£	*s.*	*d.*
225 @ 2*s.* 6*d.* =	28	2	6
1042 @ 5*s.* 0*d.* =	260	10	0
	£288	12	6

On the preparation of the Accounts for the year ending 31st December, 1922, it appears that a loss of £948 (*ante*) has been made. Notice is accordingly given to the Inspector of Taxes that an adjustment is claimed under sec. 34. A copy of the year's Accounts is furnished to the Inspector together with the completed form 79A, tax having previously been paid on the average profits of £646 less 10 per cent. The accounts would not, of course, be *available* until a much later date than 31st December.

The loss is £348 and the average profit charged is £646, so that the Schedule D assessment is reduced to £298 less 10 per cent. = £269. The total assessable income is thus reduced by £583 — £269 = £313, which, by reducing the total income, reduces that charged at the standard rate of 5*s.* thereby giving repayment of £313 @ 5*s.* = £78 5*s.* This may be seen from the following adjusted total liability :—

		£
Total income . .		1118
less 10 per cent. of £298	£29	
allowance . .	135	
	—	164
		954

	£	*s.*	*d.*
225 @ 2*s.* 6*d.* =	28	2	6
729 @ 5*s.* 0*d.* =	182	5	0
	£210	7	6

Depreciation.—The allowance of depreciation increases a loss, thus if the actual accounts for 1922 showed a loss of £500 before allowing depreciation (as *allowed* for Income Tax purposes) of £100, the loss which could be set-off against taxed income would be £600 (p. 163). This year would then appear in subsequent averages as a profit of the amount of depreciation, £100.

Comparison.—Taking the above example, the comparative effect of (*a*), setting off the loss under sec. 34, and (*b*), allowing the loss to fall into subsequent averages, may be seen below.

Assume the profits to be as follows, and the private income, and the rate in the £, to remain stationary :—

	£
Year to 31st December, 1919 . .	846
,, ,, ,, 1920 . .	672
,, ,, ,, 1921 . .	420
,, ,, ,, 1922 . .	loss £348
,, ,, ,, 1923 . .	125
,, ,, ,, 1924 . .	486
,, ,, ,, 1925 . .	540

The year 1922 will appear as *nil* in subsequent averages if sec. 34 has operated *ante*, but as a loss of £348 if sec. 34 has been ignored. In this comparison it is unnecessary to set out the full computations of each year's averages, as they are calculated on the respective periods of 3 years, as at p. 49.

Under Sec. 23.

	£ s. d.	£ s. d.	Tax. £ s. d.
1915–16	(*ante*)		66 9 0
1916–17	364 @ 2 $1\frac{1}{5}$	38 14 4	
	845 @ 3 0	126 15 0	165 9 4
1917–18	182 @ 2 $1\frac{1}{5}$	19 2 2	
	845 @ 3 0	126 15 0	145 17 2
1918–19	204 @ 2 $1\frac{1}{5}$	21 9 0	
	845 @ 3 0	126 15 0	148 4 0
			£525 19 6

	Business. £	Other incomes. £	Tax. £ s. d.
1922–23	298 — 10 per cent.	820	210 7 6
1923–24	364 . . .	820	225 2 6
1924–25	182 . . .	820	184 2 6
1925–26	204 . . .	820	189 2 6
	£1048		£808 15 0

Not under Sec. 34.

	Business. £	Other incomes. £	Tax. £ s. d.
1922–23	646 — 10 per cent.	820	288 12 6
1923–24	248 ,, ,, ,,	820	199 2 6
1924–25	66 ,, ,, ,,	820	158 2 6
1925–26	88 ,, ,, ,,	820	162 17 6
	£1048		£808 15 0

For 1926–27 and subsequent years the assessments are similar whether sec. 34 has been invoked or not, as its effect only extends to 1918–19.

The question of whether to ignore sec. 34 or not is one for consideration of the facts of the particular case, reference being paid to prospective profits and to consideration of relief, and Super Tax; therefore, before deciding to claim under sec. 34 the matter should, so far as is possible, be estimated and then worked out on the above principle.

The following factors are important.

Sec. 34. Advantages.—(1) *When the loss is likely to continue.*—Thus, assuming the profits as shown at 31st December annually to be as follows :—

	£	
1919	500	
1920	400	
1921	600	£
1922 loss		500
1923 ,, ...		400
1924 ,, ...		200

Assessments would result as follows, omitting for simplicity the question of 10 per cent. allowance for earned income :—

	Under sec. 34.	Not under sec. 34.
1922–23	nil	£500
1923–24	„	166
1924–25	„	nil
1925–26	„	nil
	nil	£666

Had the profits reverted in 1923 to the normal level, there would not, all other factors apart, be any advantage or disadvantage in the operation of sec. 34, except that the section gives immediate relief, whereas, otherwise, the reduction is spread over subsequent years. Thus, if the profits were £500 for 1923 and £400 for 1924, the comparison would be as follows :—

	Under sec. 34.	Not under sec. 34.
	£	£
1922–23	nil	500
1923–24	333	166
1924–25	366	200
1925–26	300	133
	£999	£999

(2) *If the rate in the £ is* **not** *likely to increase.*—Thus, if the standard rates in the £ were 5*s.* for 1922–23, 6*s.* for 1923–24, 1924–25, and 1925–26, it will be seen from the example at the end of (1) that tax would be as follows, the full standard rate being taken for simplicity of illustration :—

	Under sec. 34.				Not under sec. 34.			
	£	£	*s.*	*d.*	£	£	*s.*	*d.*
1922–23	nil				500 @ 5*s.* . .	125	0	0
1923–24	333 @ 6*s.* .	99	18	0	166 @ 6*s.* . .	49	16	0
1924–25	366 @ 6*s.* .	109	16	0	200 @ 6*s.* . .	60	0	0
1925–26	300 @ 6*s.* .	90	0	0	133 @ 6*s.* . .	39	18	0
		£299	14	0		£274	14	0

(3) *In the first two years of a new business.*—Assume that a business is commenced in 1922 : that losses are made for 1922 and 1923 of £200 and £100 respectively ; that profits of £500 are made in 1924 and £500 in 1925 : and that in the case of a private firm or individual or a limited Company

there is other taxed income. In the case of the Company, the taxed income may take the form of Schedule A on premises owned and occupied by the Company. The Schedule D assessments would, of course, be "*nil*" for 1922–23 and 1923–24 and 1924–25 (see "AVERAGE," p. 49), the assessments for 1922–23 and 1923–24 being based on the result of the trading for 1922, while that for 1923–24 would be on the average trading of 1922 and 1923. For 1925–26, however, the assessment would be on the average of the first three years of the business. The full standard rate is adopted for simplicity.

The business has taxed income of £600.

	Under sec. 34.		Not under sec. 34
	£	£ *s.* *d.*	
1922–23 repayment on	200 @ 5*s.*	50 0 0	nil
1923–24 „	100 @ 5*s.*	25 0 0	nil
1924–25 nil			nil
	£ £ *s.* *d.*		£ £ *s.* *d.*
1925–26 payment	166 @ 5*s.* 41 10 0		66 @ 5*s.* 16 10 0
1926–27 „	333 @ 5*s.* 83 5 0		300 @ 5*s.* 75 0 0
	Tax paid £124 15 0	repaid £75 0 0	Tax paid £91 10 0

Tax would be initially paid under both cases in the amount of £120 per annum = £600 for five years, at 5*s.* in the £ on the £600 "taxed" income.

The comparison would result as follows :—

Under sec. 34.	£ *s.* *d.*	Not under sec. 34.	£ *s.* *d.*
Tax paid	600 0 0	Tax paid	600 0 0
„ „	124 15 0	„ „	91 10 0
	724 15 0		
less repaid	75 0 0		
Total tax borne	£649 15 0	Total tax borne	£691 10 0

The reason of the above divergent results is that, under the principles of averaging, the loss in the first year would only come into subsequent averages for one year if the second year's trading shows a loss, thus only one-third of that loss could, apart from the operation of sec. 34, be allowed against

subsequent assessments. Taking the last example, the loss of £200 would receive its first allowance against profits in the average for 1925–26, which would be—

	£	
Year to 31st December 1922	loss 200	
,, ,, ,, ,, 1923	,, 100	£
,, ,, ,, ,, 1924	profit	500
		300 loss
		3)200
		£66

In the average for 1926–27, the 1922 loss would not appear. The 1923 loss would receive its second and last allowance of one-third in the next average for 1927–28.

Similarly, if a loss arose in the first year only, two-thirds only thereof can be allowed if the procedure of sec. 34 is not followed.

In the years 1922–23 to 1926–27, the total amounts assessed would be :—

	£
Not under sec. 34	= 866
Under sec. 34 £999—£300 repaid .	= 699
	£167

This difference of £167 represents two-thirds of the 1922 loss of £200 and one-third of the 1923 loss of £100.

(4) *If it will have no probable detrimental effect on "allowances."*—These cases require considering on the applicable facts.

Commissioners' Despotic Powers.—Applications under sec. 34 may be made either to the District Commissioners or the Special Commissioners.

It has been held in *Furtado* v. *City of London Brewery Company, Ltd.*, [1914] C. A. (*d*) (see p. 340), affirming previous decisions, that an "application" is not an "appeal," and that

(*d*) 1 K. B. 709 ; 83 L. J. K. B. 255 ; 30 T. L. R. 177 ; 110 L. T. 241 ; 58 S. J. 270.

therefore the Commissioners' decision thereon is final, as the Crown's remedy of a Case Stated (p. 338) applies solely to "appeals." Sec. 34 is an "application." This case is set out at p. 73. See p. 334.

See also *Bruce* v. *Burton* (1901) (*e*).

This point is of considerable moment, as the Commissioners are thus able to adopt equity in place of a hard, technical construction, and as the District Commissioners are local, unbiassed, and disinterested individuals, it is clear that the working of a section with the extensive scope of that in question being solely determinable by such a body, is of advantage to the taxpayer. See *post* (INSURANCE COMPANY).

The point was also raised in *Rex* v. *Commissioners of Income Tax for the City of London* (1904) (*f*).

Insurance and Financial Companies, etc.—(See pp. 198, 247.) The income of Insurance and Financial Companies consists to a great extent of interests and dividends. It is the practice to assess these Companies on their interests and dividends, instead of on actual profits, unless the latter exceed the former. Apart from interest and dividends, Insurance Companies generally make a loss, but in claims to set-off such loss under sec. 34 against the taxed interest and dividends, the Crown successfully raises opposition on the ground that the loss does not exist, but that, on the interest and dividends being credited, a profit is shown. The allowance for Management expenses of certain companies (p. 249) allows a set-off of expenses against taxed income.

Assume that the following statement applies :—

Payments	£	Receipts	£
Total expenses	94,000	Interest and dividends	85,000
Balance	51,000	Other receipts	60,000
	£145,000		£145,000

The item "Interest and Dividends" would be taxed at the

(*e*) 85 L. T. 227 ; 65 J. P. 440 ; 4 Tax Cas. 399.
(*f*) 91 L. T. 94.

source by deduction, and would in an ordinary trading concern be omitted in arriving at the assessable profit.

The Inspector of Taxes contends that there is not a "loss," but a profit of £51,000. He chooses the alternative method of *assessment* on the £85,000 interest and dividends, but for the purpose of sec. 34 he contends that a different course should be followed and the *profit* ascertained. It is obviously inequitable that one method should be rejected for *assessment* purposes and then advanced for *adjustment* purposes, particularly as it is the acknowledged practice with ordinary concerns to exclude taxed income from an Income Tax Profit and Loss Account, as otherwise double taxation would result, firstly by deduction of tax by the payer (p. 388), and secondly, under Schedule D. Under the despotic powers of the Commissioners (*ante*) the latter *could remove this inconsistency and allow Insurance and Financial Companies to set-off taxed income against a loss which arises by the exclusion of taxed income,* but Rule 15 (2) of Cases 1 and 2 of Schedule D (p. 248) provides that, in ascertaining under Rule 13 of Cases 1 and 2 (p. 371), or sec. 34 (*ante*) whether an *Assurance* Company has sustained a loss on its life assurance business, the income from investment of the life fund is to be treated as part of the profits of the life business.

In the above statement there would be a loss of £34,000, which could be set against the interest and dividends of £85,000, leaving taxed income of £51,000, *which coincides with what is obviously the correct profit.* The Crown would then have no advantage in adopting the option of assessment (*a*) on profits or (*b*) interest and dividends, by taking the larger, as the adjustment under sec. 34 would render the results equal.

In *Revell* v. *Edinburgh Life Assurance Co.* (*g*) (1906) (p. 251), LORD MCLAREN, in admitting that the Court had no power to question the Commissioners' decision on sec. 34, said that there was great difficulty in seeing any logical basis for the Revenue's adoption of one principle for assessment and another for adjustment.

(*g*) 5 Tax Cas. 221.

Proper Accounts Unavailable.—A difficulty arises on a taxpayer who has not previously kept proper accounts, engaging an Accountant to introduce a proper system of accounts. The Accountant sometimes finds that a loss has obviously been made, but he is unable to certify the accounts as being other than approximate, with the result that the actual amount of loss, for the purposes of sec. 34, cannot be ascertained.

In such a case, if *e.g.* proper accounts were kept from January 1st, the Commissioners have granted repayment in respect of four times the loss shown in the accounts to 31st March.

CHAPTER X

PAYMENT AND RECOVERY

Payment.

The Income Tax is payable to the Collector (p. 11) in one sum on or before the 1st day of January in the year of assessment (except as *post*), but this is not adhered to in practice. Additional assessments are not restricted to any date. In the case of English and Irish Railways, sec. 157 (3) of the Income Tax Act, 1918, allows payment of Schedule D tax by four quarterly payments, on or before the 20th June, 20th September, 20th December, and 20th March respectively.

Half-yearly Collection.—In the following cases tax is collectible in two half-yearly equal instalments on 1st January and 1st July.

Schedule D.—Individuals or firms in respect of any trade, manufacture, adventure, or concern in the nature of trade or of any profession, vocation or employment.

Schedule E.—All employees.

Schedule B.—Individuals or firms occupying land for husbandry only.

Schedule A.—Nos. I. and II.

With employments the above provisions are not to apply to weekly wage earners who are charged quarterly or to individuals whose tax is deducted at definite intervals of less than half a year.

Weekly Wage Earners.—(See p. 68.)

The first demand notes are generally issued in December, but payment is not usually enforced until February, and, in many instances, at later dates.

There is no authority in Collectors to receive payment before receipt of the duplicates of the assessments, but when

payment is made prior thereto, the tax is retained and provisional receipts issued.

Number of Letter Assessments.—Tax assessed under a "Number or Letter" (p. 13) is payable to the Collector of Customs and Excise, but in default of payment the assessment is added to the local Collector's duplicate and collected by him.

Unoccupied Premises and Lands, Schedule A.—When payment cannot be obtained through the tenant having removed to an unknown address, and the premises are unoccupied and no distress can be found, tax may be collected from the next tenant, who is allowed to deduct the tax from his rent.

Allowance can be claimed in respect of "voids" (p. 37).

RECOVERY.

The Collector's warrant authorizes him, without further authority, to distrain on default in payment.

A distress levied by a collector is kept for five clear days, exclusive of the day of seizure and the day of sale, at the cost of the person refusing to pay. If payment is not made within the five days the distress is appraised and sold by public auction, and any excess over the tax, plus costs and charges of taking, keeping, and selling the distress, is returned to the person assessed. See sec. 162 of the Income Tax Act, 1918.

Crown.—See sec. 209, Companies (Consolidation) Act, 1908, and sec. 33 of Bankruptcy Act, 1914, *re* preference for Income Tax. See *Food Controller* v. *Cork* and *Commercial Bank of Scotland* v. *Campbell*.

Goods of Third Person.—In a distraint for Income Tax the goods of a third person may not be taken in respect of an assessment under a schedule other than Schedule A, as when the tax is charged on a *person*, only his goods may be taken, but when the tax is on the *property* any goods found thereon may be lawfully distrained.

In *Macgregor* v. *Clamp & Son* (1913), C. A. (*a*), damages were claimed for wrongful distress on a piano, belonging to the wife, for the sum of £1 11*s*. due for Schedule A and Inhabited House Duty in respect of house occupied by the husband. The piano was used for giving music lessons.

It was held that the distress was lawful, as the taxes in

(*a*) 30 T. L. R. 128; 58 S. J. 139.

question were taxes charged upon the premises, and, following *Juson* v. *Dixon* (1813) (*b*), a distress could be levied on the goods of a third person. There was no privilege from distress for an instrument of trade. The Law of Distress Amendment Act, 1888, was held not to apply.

Incapacitated Persons, etc. Executors or administrators of deceased persons, and the parents or guardians of any persons under the ages of twenty-one years, are liable to pay Income Tax due in respect of such deceased persons, or persons under age (sec. 161).

In *re Ward: Harrison* v. *Ward* (1922) (*c*) a wife was living with her husband till her death in 1919, and she was entitled under settlement to a large income for her life. No separate assessment had been claimed (p. 273), and after her death the Crown claimed Income Tax and Super Tax on income received by the wife during her life. It was held that the husband was liable under Rule 16 of the rules to all Schedules.

Breaking-open Order.—If necessary, a Collector may, under sealed warrant (form 164) of the Commissioners, break open premises in the daytime, calling a police constable to his aid (sec. 162).

The Collector is required to make oath as to his inability to obtain entrance, and the Commissioners' warrant cites such oath.

The Collector's presence is necessary to a lawful levy or breaking-open.

Costs of Distress.

Not Exceeding £20.—When the whole of the sums sought to be levied by distress do not exceed £20, the following scale applies to England and Wales :—

	s.	*d.*
Levying distress	3	0
Man in possession, per day	2	6
Appraisement, whether by one broker or more, Sixpence in the Pound on the value of the goods.		
Stamp, the lawful amount thereof.		
Catalogues, sale and commission, and delivery of goods, one shilling in the pound on the net produce of the sale.		
Advertisements, if any	10	0

(*b*) 1 M. & S. 601. (*c*) 126 L. T. 628.

Exceeding £20.—No scale of fees is statutorily prescribed for distresses exceeding £20, but in practice the following scale is allowed.

Levying distress :
(1) On any sum exceeding £20 and not exceeding £50 — 3*s.* on £20, and 3 per cent. on the balance.
(2) On any sum exceeding £50 and not exceeding £200 — 3*s.* on £20, 3 per cent. on £30, and 2½ per cent. on the balance.
(3) On any sum exceeding £200 — 3*s.* on £20, 3 per cent. on £30, 2½ per cent. on £150, and 1 per cent. on the balance
Man in possession, 5*s.* per day ; to provide his own board in every case.
Appraisement, whether by one broker or more, sixpence in the pound on the value as appraised.
Stamp. The lawful amount.
For advertisements, the sum actually and necessarily paid.
Catalogues, sale and commission, and delivery of goods :—

				£
7½	per cent.	on the sum realized	not exceeding	100
5	,,	,, next	. . . .	200
4	,,	,, ,,	. . . .	200
3	,,	,, ,,	. . . .	500
2½	,,	,, excess over	. . .	1000

A fraction of £1 to be in all cases reckoned £1.

Costs and charges cannot be claimed by the Collector until he has actually made a levy and an inventory of the goods received.

Committal to Prison.—A person refusing to pay and having no distrainable effects, may be committed to prison under sealed warrant of the Commissioners, and the costs of apprehending and conveying to prison are added to the tax due.

DEDUCTION OF TAX.

Prior to 1913 the practice existed of deducting tax from dividends after the introduction of the Budget but before the passing of the Finance Act legalizing the provisions of the Budget. The resolution of the Committee for Ways and Means was accepted as sufficient authority until the procedure was questioned in *Bowles* v. *Bank of England*, [1913] (*d*), when it

(*d*) 1 Ch. 57 ; 82 L. J. Ch. 124 ; 108 L. T. 95 ; 6 Tax Cas. 136.

was urged that there should not be taxation of the subject without specific legal enactment, and it was decided that deduction is illegal until the Finance Act imposing the tax is passed.

Sec. 30 of the Customs and Inland Revenue Act, 1890 (now sec. 210 of the Income Tax Act, 1918), enacted that in order to ensure collection in due time, the Income Tax provisions in force on the 5th April shall continue until amended, and the Crown relied on this section, but it was held that it only applied to the preliminaries, such as obtaining returns from taxpayers, and did not cover assessment or collection. It was held in *Bowles* v. *A.-G.*, [1912] (*e*), that returns could be so demanded for Income Tax and Super Tax, but in order to legalize the practice as to deduction, the Provisional Collection of Taxes Act, 1913, was passed. This Act provides that the resolution passed by the Committee of Ways and Means of the Whole House of Commons shall have statutory effect and continue existing enactments for a period expiring at the end of four months after the date on which the resolution is expressed to take effect, or, if no such date is expressed, after the date on which the resolution is passed by the Committee.

The resolution ceases to have statutory effect in the following cases :—

(1) If it is not agreed to, with or without modification, by the House within the next 10 days on which the House sits after the resolution is passed by the committee.

(2) If a Bill varying or renewing the tax is not read a second time within the next 20 days on which the House sits after the resolution is agreed to.

(3) If Parliament is dissolved or prorogued.

(4) When an Act comes into operation varying or renewing the tax.

(5) If the resolution is rejected by the House.

(6) If the provisions giving effect to the resolution are rejected during the passage of the Bill containing those pro-

(*e*) 1 Ch. 123 ; 81 L. J. Ch. 155 ; 105 L. T. 870 ; 5 Tax Cas. 685.

visions through the House, and the resolution, if modified by the House, shall have effect under this Act as so modified.

It is provided that where the resolution ceases to have effect any money paid under the resolution shall be made good, and this also applies when the tax, as varied or renewed by the resolution, is modified by the House or an Act.

When a resolution has had statutory effect in a session, such effect cannot be again given in the same session to the same resolution or to a resolution having the same effect.

It is further provided by the Act that any payment or deduction made within one month after the date of the expiration of the tax shall be legal, subject to the condition that if a resolution is not passed by the House or by the Committee of Ways and Means of the whole House within that month for the renewal of the tax, or if such resolution is passed within that month but ceases to have effect (*ante*), any money paid or deducted shall be made good.

The question of deduction arose on the 1914–15 Budget. The Finance Bill proposed an "unearned" rate of 1*s.* 4*d.* in the £, but it was subsequently decided to reduce the rate to 1*s.* 3*d.* Tax had been extensively deducted, and the excess of 1*d.* became a repayable reduction under the Act. The Board of Inland Revenue suggested that, in the case of dividends and other items paid out of profits or gains brought into charge, the excess should be allowed on payment of the next dividend, but the recipient of the dividend could require repayment from the Company. In the case of tax deducted from payments *not* brought into charge, the Board repaid the excess on application, but in the case of the former class of payments the Board did not repay, as the Company was eventually charged only at the reduced rate on its profits.

See Deduction Schedule A, p. 33.

There are the following two classes of payments.

Not Payable out of Profits Charged (p. 263).

Payable out of Profits Assessed (p. 262).

With the former, the deduction must be at the rate in

force at the time of payment, while with the latter the proportions of the rates operative during the period of accrual of the payment or the profits used to pay the amount have to be observed.

Compound Interest.—In *re Morris; Mayhew* v. *Halton* (1921) (*f*) the next of kin of A mortgaged their rights as next of kin to insurance society. In one case the society agreed to reassure the mortgaged premises on payment, after the death of A, of all costs and £40,000 with *compound* interest at 4½ per cent. per annum with yearly rents. It was held that Income Tax was deductible from the interest as the interest did not become capitalized at the end of each year.

See also *Graham* v. *Seal* (1919) (*g*); *Oswald* v. *Kirkcaldy Magistrates* (1918) (*h*), and *re Young's Estate* (1918) (*i*).

RATE OF DEDUCTION.

Rule 21 of the Rules to all Schedules (p. 263) provides as follows for the former payments *not* made out of profits charged: "Upon payment of any interest of money, annuity, or other annual payment charged with Tax under Schedule D, or of any royalty or other sum paid in respect of the user of a patent, not payable, or not wholly payable, out of profits or gains brought into charge," deduction shall be made at the rate in force "*at the time of payment.*"

In *re Michelham; Michelham* v. *Michelham* (1921) (*k*), a loan agreement was entered into in 1917 with A by the testator M. Administration of the latter's estate was ordered by the Court on 29th August, 1919, and A.'s claim as creditor was admitted at £22,500. A sum of *interalia* £3025, made up of £2500, the balance of C.'s admitted debt against the estate, and £750 interest at 4 per cent. from the date of the administration decree to 29th June, 1920, less Income Tax at 6*s.* (£225), was arranged by A. who objected to deduction of tax. It was held

(*f*) 125 L. T. 292.
(*g*) 88 L. J. Ch. 31; 119 L. T. 526.
(*h*) 56 Sc. L. R. 97.
(*i*) 1 I. R. 30.
(*k*) 125 L. T. 223.

that the interest was chargeable under Case 3 and that Rule 21 applied as the interest was payable out of capital, and deduction of tax was justified. Tax could not, of course, be charged on A under Case 3 and *also* deducted.

Rule 19 provides for deduction of tax from "any *yearly* interest of money, annuity or other annual payment" (whether chargeable on any property or as a personal debt or obligation by virtue of any contract, and whether payable within or out of the United Kingdom) "payable wholly out of profits or gains brought into charge," at the rates in force during *the period through which the payment was accruing due.*

This also applies to royalties in respect of the user of a patent.

Rule 20 provides that the *full* profits of a "body of persons" shall be charged before deduction of any dividend in respect of any share, right or title, and the body of persons is entitled to deduct from the dividend "*the tax appropriate thereto.*" This applies to dividends paid by a company.

Assuming a company makes up its accounts to 31st December annually and that dividends are paid half-yearly, the following example illustrates the procedure in arriving at the deduction. The periods from 1st January to 5th April, and from 6th April to 30th June, are taken as being equal, and the interim dividend as the same as the final dividend payable in December.

The standard rate for 1921–22 was 6*s.* and for 1922–23 5*s.*

The interim dividend at 30th June is not a separate entity but only a payment on account of the year to 31st December. The rate for the trading year to 31st December, 1922, is :—

$$\tfrac{1}{4} \text{ at } 6s. + \tfrac{3}{4} \text{ at } 5s. = 5s.\ 3d.$$

Tax should therefore equal 5*s.* 3*d.* for the year.

With the trading year to 30th September, 1922, the rate would be :—

$$\tfrac{1}{2} \text{ at } 6s. + \tfrac{1}{2} \text{ at } 5s. = 5s.\ 6d.$$

If tax is deducted from the interim at 30th June at 5*s.* 6*d.* ($\frac{1}{2}$ at 6*s.* + $\frac{1}{2}$ at 5*s.*) the deduction from the final at 31st

December would be at 5*s.* giving the same average as 5*s.* 3*d.* from both interim and final, but this would not be so if the final dividend differed in amount from the interim. If *e.g.* the interim were 5 per cent. and the final 10 per cent., deduction from each at 5*s.* 3*d.* would give the correct total deduction, but if 5*s.* 6*d.* were deducted from the interim, the final deduction would need to be at 5*s.* 1½*d.* to give an average of 5*s.* 3*d.* for the year to 31st December, 1922.

The Board of Inland Revenue issues annually a memorandum, showing the classes into which payments fall, in the following form.

CLASS I.—Payments which are not made out of profits or gains brought into charge to Income Tax.

This class comprises :

(*a*) Dividends and Interest from the Public Funds.

(*b*) Dividends and Interest of Foreign or Colonial Government Securities, or of Foreign or Colonial Companies, entrusted to an Agent in this Country for payment here, also the like Dividends or Interest which, although not entrusted to an Agent in this Country for payment, are realized in the United Kingdom through Bankers, Coupon Dealers, or other persons.

(*c*) Interest and Annuities paid by Municipal Corporations or other Local Authorities to Creditors on Rates, and *not paid, or not wholly paid, out of profits and gains brought into charge* to Income Tax.

(*d*) Other Interest and Annuities paid between those dates, and *not paid, or not wholly paid, out of profits and gains brought into charge* to Income Tax.

CLASS II.—Payments made out of profits or gains brought into charge to Income Tax.

This Class comprises :—

(*a*) Ground rents, etc., secured on Property charged with Income Tax.

(*b*) Interest or Annuities wholly payable out of Property, Profits or Gains charged with Income Tax.

(*c*) Dividends paid out of the Profits or Gains of Public Companies in the United Kingdom.

Tax is deductible from payments falling within this Class at the *rate or rates in force during the period through which the same were accruing due.*

The adjustment of deductions from such payments is primarily a matter to be settled between the payer and the recipient and does not immediately concern the Revenue.

† NOTE.—In the case of lands and heritages in Scotland it is specially provided by Rules 1 and 4 of No. VIII. of Schedule A, that deductions in respect of Income Tax under Schedule A made from any rent, interest or payment due for the period ending on the 15th May shall be made at the rate of the tax in force at the commencement of that period, and the above observations in regard to payments falling within Class II. are therefore not applicable.

Alimony, etc.—See *re Peck's Settlement : Peck* v. *Hamilton* (1921) (*l*).

In *re Booth* v. *Booth* (1922) (*m*) a husband agreed by a deed of separation, to pay his wife "such *weekly* sum as will after deduction of income tax amount to £260 per annum." It was held that the agreement did not contravene Rule 23 (p. 266), and the covenant was to pay a gross sum which, after deduction of tax, could leave the wife a net income of £260 a year.

In *Burroughes* v. *Abbott* (1922) (*n*) the Divorce Court ordered the husband to secure by deed the payment of an annual sum free of income tax. The deed drawn was held by the Court to contravene Rule 23, but the Court held that it should be rectified so as to secure a sum free of tax without contravening Rule 23.

See also *Dayrell-Steyning* v. *Dayrell-Steyning*, p. 272.

In *re Hatch ; Hatch* v. *Hatch* (1919) (*o*) it was held that there

(*l*) 125 L. T. 756.
(*m*) 126 L. T. 342.
(*n*) 126 L. T. 354.
(*o*) 1 Ch. 351 ; 88 L. J. Ch. 147.

was no power to recover tax not deducted from past payments of alimony.

See *Shrewsbury* v. *Shrewsbury*.

Testamentary Disposition.—See *re Shaw; Smith* v. *Shaw* (1918) (*p*).

In *re Cooper; Cooper* v. *Cooper* (1917) (*q*). The payment of a sum of £50 "in each and every calendar *month*" is an "annual payment" from which tax is deductible. In *re James' Settlement; Wasmuth* v. *James* (1918) (*r*) a *weekly* sum was also held to be an "annual payment."

In *re Musgrave; Mathell* v. *Parry* (1916) (*s*) annuities given "without deduction" were paid without deducting Income Tax. The Court held that tax was deductible and that the trustees could recover the past tax out of future payments, as the Court will, in the administration of an estate, correct errors of account between trustees and *cestuis que trust* where possible, the rule that money paid under a mistake in law cannot be recovered, not applying to this case.

See also *Smith's Trustees* v. *Gaydon* (1918) (*t*); *Wilson's Trustees* v. *Wilson* (1919) (*a*); *re Loveless; Farrer* v. *Loveless* (1918) (*b*); *re Saillard; Pratt* v. *Gamble* (1917) (*c*); *re Gretton's Indenture; Hood* v. *Byron* (p. 418); *re Pettit; Le Feure* v. *Pettit* (p. 411), and *Brooke* v. *Price* (1917) (*d*).

In *Murdoch's Trustees* v. *Murdoch and others* (1918) (*e*) a testator left his estate to his widow, but, in the event of the income exceeding £2000, the payment was to be restricted to £2000. It was held that the widow was entitled to £2000 without deduction of tax, and could recover tax deducted with interest, less tax on the interest.

In *re Foster; Hunt* v. *Foster* (1920) (*f*), certain shares were to

(*p*) 87 L. J (P.) 49; P. 47; 118 L. T. 334.
(*q*) 88 L. J. Ch. 105; 119 L. T. 303.
(*r*) 2 Ch. 54; 87 L. J. Ch. 454; 129 L. T. 114.
(*s*) 2 Ch. 417; 115 L. T. 149.
(*t*) 56 Sc. L. R. 92. (*a*) 56 Sc. L. R. 256.
(*b*) 2 Ch. 1; 87 L. J. Ch. 461; 119 L. T. 24.
(*c*) 2 Ch. 401; 86 L. J. Ch. 749; 117 L. T. 545.
(*d*) A. C. 115; 86 L. J. Ch. 329; 126 L. T. 452.
(*e*) 55 Sc L. R. 664. (*f*) 122 L. T. 585.

be treated as part of the legacies of two of four beneficiaries and were to be brought into account at their value at the testator's death, but if, on the shares being valued, the two recipients should receive more than the other two beneficiaries the excess should be brought into account in favour of the latter with interest at 4 per cent. from the date of the testator's death. It was held that, in order to give equality, the income of the estate ought to be taken as the gross income before deduction of tax, and the amounts added as interest should similarly be brought into account at the gross amounts.

BACK DUTY.

There is no legal claim by the Revenue to "Back Duty" in respect of unassessed or underassessed profits, except that additional assessments or surcharges may be made for the three years preceding the year of assessment.

In practice, however, Inspectors of Taxes claim "Back Duty" for *e.g.* eight or nine years, but they have no legal authority for such action. On a refusal to pay, the practice is to threaten the imposition of penalties in respect of inaccurate Returns (p. 409). The power of imposing penalties lies mainly with the Commissioners (see p. 409), a point which is of moment in view of the fact that the Revenue is statutorily restricted as regards repayment to the taxpayer of tax overpaid, to a maximum period of three years increasing to six years (p. 411), and it may be contended that the limit applying to repayment by the Crown would be equitably applicable to repayment to the Crown. This argument is supported by sec. 125 (2) of the Income Tax Act, 1918, and sec. 29 of the Finance Act, 1923, restricting the making of additional assessments in respect of past under-payments to a similar period as for repayments, and it would thus appear to have been the intention of the Legislature that the limitations should be coincident.

There being no legal right to make assessments for a longer period than the three preceding years, increasing to six

years, *ante*, in some cases "Back Duty" may be levied in the form of inflated assessments for the three years, but the Commissioners, on appeal, may reduce such assessment, to the actual profits as ordinarily ascertained for Income Tax purposes.

Surcharges.—Surcharges may be made in treble duty, but only in the case of profits *omitted* from assessment—not under-assessed (sec. 126 of the Income Tax Act, 1918), but on appeal the Commissioners may adjust the surcharge to the profits, and in single duty (sec. 137 (6) (b) of the Income Tax Act, 1918). (See p. 411.)

See *R.* v. *Kensington Income Tax Commissioners* (1913) (*g*).

(*g*) 3 K. B. 870 ; 6 Tax Cas. 279.

CHAPTER XI

EXEMPTIONS

Charities.

Schedule A.—Exemptions from tax under Schedule A are allowed by No. VI. of Schedule A as follows :—

In occupation. - (*a*) The tax charged on any **college or hall** in any university of the United Kingdom, in respect of the public buildings and offices belonging to the college or hall, so far as not occupied by any individual member thereof or by any person paying rent for the same :

(*b*) The amount expended on repairs of the public buildings and offices of any such college or hall, and of the gardens, walks, and grounds for recreation, repaired and maintained by the funds of the college or hall :

(*c*) The tax charged on any **hospital, public school, or almshouse,** in respect of the public buildings, offices, and premises belonging thereto, and so far as not occupied by any individual officer or the master thereof whose total annual income, however arising, estimated in accordance with this Act, amounts to one hundred and fifty pounds or more, or by a person paying rent for the same :

(*d*) The amount expended on repairs of any such hospital, public school, or almshouse, and of the offices belonging thereto, and of the gardens, walks, and grounds used for the sustenance or recreation of the hospitallers, scholars and almsmen respectively, which are repaired and maintained by the funds of the hospital, public school, or almshouse :

(*e*) The tax charged on any building being the property of any literary or scientific institution, and used solely for the purposes of that institution, in which no payment is made or demanded for any instruction there afforded, by lectures or otherwise ; and so far as not occupied by an officer of the institution or by any person paying rent for the same :

The said allowances to be granted by the Commissioners for general purposes in their respective districts :

Sec. 37 of the Income Tax Act, 1918 (formerly part of No. VI. of Schedule A).

Let to Tenants.—The rents and profits of any lands, tenements, hereditaments, or heritages belonging to any **hospital, public school or almshouse, or vested in trustees for charitable purposes,** so far as the same are applied to charitable purposes only.

It was held in *Rex* v. *Special Commissioners* (*ex parte Essex Hall*), [1911] C.A. (*a*) that the above provision only applied to property let to tenants; thus a charity which was *not* within No. VI. was allowed exemption from Schedule A on property let, but not in respect of property in the occupation of the claimants. A charity had to be within (1) *and* (2) to carry exemption under Schedule A on *all* property owned by the charity. Sec. 30 of the Finance Act, 1921, now exempts property *owned and occupied* by a charity not within No. VI.

This section also exempts under Schedule B lands occupied by a charity except lands occupied for the purpose of husbandry where the work in connection with husbandry is not mainly carried on by beneficiaries and the profits are not applied solely for the purposes of the charity.

The exemptions do not apply to any part of the properties in the use and enjoyment of any person whose total income is not less than £150 per annum.

"Charity" in sec. 30 means "any body of persons or trust established for charitable purposes only."

See sec. 21 of Finance Act, 1923, *re* Irish charities.

See *Bryan* v. *Trustees of Roman Catholic Arch-Diocese of Glasgow*, where schools were let.

Hospital, Public School, and Almshouse.—To constitute a hospital, public school, or almshouse, within No. VI. of Schedule A, it is not necessary that the support should be wholly charitable, but it must be mainly so.

In *Trustees of Mary Clark Home* v. *Anderson*, [1904] (*b*) the Home was for ladies in reduced circumstances, but who had an annual income of not less than £25 and not more

(*a*) 2 K. B. 434; 80 L. J. K. B. 1035; 104 L. T. 764; 27 T. L. R. 466; 5 Tax Cas. 636.

(*b*) 2 K. B. 645; 73 L. J. K. B. 806; 91 L. T. 457; 20 T. L. R. 626; 5 Tax Cas. 48.

than £55. Coal, gas, and attendance were provided free, with one or two unfurnished rooms; but food, clothing, washing, furniture, and medical attendance had to be provided by the inmate. The expenses of the Home were derived from endowments.

It was held that the Home was an "almshouse" within No. VI. of Schedule A, and therefore exempt even though it was not wholly supported by charitable subscriptions.

CHANNELL, J.:

> "I have come to the conclusion on the whole that this, being an institution the objects of which are entirely and absolutely charitable, can be deemed to be an almshouse. I do not think it is necessary that to make a thing an almshouse it should be for entirely destitute people or that it should supply all the wants of its inmates."

In *Cawse* v. *The Committee of the Lunatic Hospital Nottingham*, [1891] (*c*) the hospital, which was not for paupers, had a substantial charitable endowment, and fees were paid by patients.

It was held that the exemption under No. VI. of Schedule A in respect of hospitals applied.

CHARLES, J. said:

> "Now, all colleges and halls of universities are exempt, and I think that they would remain exempt, even though it was proved that in any particular year a particular college or hall had, if I may use an ordinary expression, paid its way. Then comes the exemption of hospitals, public schools, or almshouses, and it has been held with regard to public schools that those words used as they are, in connexion with the word almshouse which follows it, apply to a public school which has some charitable element in its endowments. To that extent the words 'public school' are to be restricted. The same thing has been held with reference to hospitals."

MR. JUSTICE CHARLES further held that the word hospital does not include the case of a hospital with no charitable endowment, but that it does include the case of a hospital which has a substantial charitable endowment.

It was held in *Needham* v. *Bowers* (1888) (*d*) that a lunatic

(*c*) 1 Q. B. 585; 60 L. J. Q. B. 485; 65 L. T. 155; 39 W. R. 461; 3 Tax Cas. 39.

(*d*) 21 Q. B. D. 436; 59 L. T. 404; 37 W. R. 125; 2 Tax Cas. 360.

asylum which was wholly self-supporting was not exempt as a "hospital." There was no annual charitable endowment, but a few patients were maintained free of cost.

In *Coman* v. *Rotunda Hospital* (1920) (*e*) the buildings of the hospital consisted of the hospital proper and contiguous rooms which were hired out for meetings and entertainments. Considerable profits were made and applied for the maintenance of the hospital. The House of Lords held that the profits were outside Schedule A, but were from trade or adventure and assessable under Schedule D as there was no exemption from trading profits. Sec. 30 of the Finance Act, 1921, now exempts profits from trade (see p. 399).

In *Sutton's Hospital in Charterhouse* v. *Elliott* (1921) (*f*) the governors were assessed under Schedule A in respect of the premises of the hospital inhabited by the master and other officers whose incomes exceeded £150 per annum. It was held that the governors were rightly assessed as they were the occupiers, and the premises in question were liable as the inhabitants' incomes exceeded £150 per annum.

Charitable Purposes.—In *Special Commissioners of Income Tax* v. *Pemsel*, [1891] H. L. (*g*), certain lands were vested in trustees upon trust to apply the rents and profits to maintaining :—

(*a*) Missionary establishments abroad.

(*b*) School for children of missionaries and ministers.

(*c*) Choir houses.

It was held that the trust was one for "charitable purposes."

In *Maughan* v. *Free Church of Scotland* (1893) (*h*) an Assembly Hall was held in trust for the Free Church, and it was used for meetings of the General Assembly who sit annually for about ten days, and for meetings for Commissions of Assembly about three times a year. Occasionally it was used

(*e*) 123 L. T. 529.

(*f*) 127 L. T. 214.

(*g*) A. C. 531 ; 61 L. J. Q. B. 265 ; 65 L. T. 621 ; 55 J. P. 805 ; 3 Tax Cas. 53.

(*h*) 30 Sc. L. R. 666 ; 20 R. 759 ; 3 Tax Cas. 207.

for other purposes, mainly connected with religion, charity, and temperance.

It was held that the Hall was not within No. VI. of Schedule A, and that sec. 37 (*ante*) dealt only with rents and profits of land and not with the lands themselves.

The latter point was elaborated in *Rex* v. *Special Commissioners* (*ex parte Essex Hall*), [1911] C. A. (*i*). A limited Company, which was not trading for profit, and was admitted to be "trustees for charitable purposes," owned a building partly let to a tenant, and the remainder, comprising the greater part thereof, was used for religious purposes in connexion with which the Company was formed. When not required for such purposes that part of the building was let for public meetings. The Company was assessed under Schedule A in respect of the whole building, but obtained repayment in respect of the part let to a tenant.

It was held that the exemption in sec. 37 (*ante*), in respect of being vested in trustees for charitable purposes, did not apply to property in *occupation*, but only where it was let to a tenant and rent resulted, and that the words "so far as the same are applied to charitable purposes" qualify "rents and profits," not "lands, tenements, etc." Sec. 30 of the Finance Act, 1921 (*ante*), now extends the exemption to properties in the occupation of a charity.

In *Rex* v. *Special Commissioners* (*ex parte University College of North Wales*) (1909), C. A. (*k*), the college, which provided a liberal education, derived its income from investments, part being appropriated to (*a*) specific educational purposes, and part to (*b*) the general purposes of the college.

It was held that the college was established for "charitable purposes" only; that the revenues (*b*) were applied to "charitable purposes"; and that exemptions applied to them under Schedules A, C, and D.

(*i*) 2 K. B. 434; 80 L. J. K. B. 1035; 104 L. T. 764; 27 T. L. R. 466; 5 Tax Cas. 636.

(*k*) 78 L. J. K. B. 576; 100 L. T. 585; 25 T. L. R. 368; 53 S. J. 320; 5 Tax Cas. 408.

The MASTER OF THE ROLLS approved the following opinion of LORD HERSCHELL in *Commissioners of Inland Revenue* v. *Scott*, [1892] (*l*) :—

> "It cannot be doubted that property held by a body corporate or unincorporate 'for the promotion of education, literature, science, or the fine arts,' is technically held upon a charitable trust."

The definition of charity by LORD MACNAGHTEN in *Special Commissioners* v. *Pemsel* (*m*) (p. 401) was also approved. His Lordship divided charities into four classes :—

(1) Trusts for the relief of poverty.

(2) Trusts for the advancement of education.

(3) Trusts for the advancement of religion.

(4) Other trusts for other purposes beneficial to the community.

As regards (4) LORD MACNAGHTEN said :—

> "The trusts last referred to are not the less charitable in the eye of the law because incidentally they benefit the rich as well as the poor, as indeed every charity that deserves the name must do, either directly or indirectly."

Public Schools.—In *Bain* v. *Free Church of Scotland* (1897) (*n*), a Free Church College, which was a Divinity Hall, was intended for the training of candidates for the ministry, but other students were admissible.

It was held that the College was not a "Public School" within No. VI. of Schedule A. In *Blake* v. *Mayor, etc., of London*, [1887] C. A. (*o*), the Corporation of London founded the City of London School to give a liberal education to the sons of persons engaged in professions, commerce, or trade, and part of the Corporation's estate was charged with payment of an annual sum towards the support of the School. No profit was sought or made, but substantial fees were charged.

It was held that the School was a "Public School" within No. VI. of Schedule A.

(*l*) 2 Q. B. 152 ; 67 L. T. 173 ; 56 J. P. 580 ; 40 W. R. 632, C. A.

(*m*) [1891] A. C. 531 ; 61 L. J. Q. B. 265 ; 65 L. T. 621 ; 55 J. P. 805 ; 3 Tax Cas. 53.

(*n*) 34 Sc. L. R. 351 ; 24 R. 496 ; 3 Tax Cas. 537.

(*o*) 19 Q. B. D. 79 ; 56 L. J. Q. B. 424 ; 36 W. R. 791 ; 2 Tax Cas. 209.

In *Ackworth School General Committee* v. *Betts* (1915) (*p*), the school was opened in 1779, and was established by subscriptions given by members of the Society of Friends. The cost of maintenance per head was £44 11*s.* 5*d.*, while only £6 10*s.* $2\frac{3}{4}$*d.* was received from sources other than school fees, so that the charitable element was small. It was held that the school was not within the words "public school."

In *Cardinal Vaughan Memorial School* v. *Ryall* (1920) (*q*) it was held that the School was a "public school" within No. VI. of Schedule A. MR. JUSTICE ROWLATT held that the school had a charitable substratum and was managed by a public body and no profit was contemplated. The school being denominational was not conclusive and the word "public" was not to be measured by the number of people using the school.

See *College of Preceptors* v. *Jenkins* (1919), p. 408.

Libraries and other Literary Institutions. — Free libraries carry exemption unless a subscription library is attached.

In *Mayor, etc., of Manchester* v. *McAdam*, [1896] H. L. (*r*), a Free Library was maintained by the Corporation, under the Public Libraries Act, 1892, and it was held that the exemption to "literary or scientific" institutions, applied.

In *Musgrave* v. *Magistrates, etc., of Dundee* (1897) (*s*), in one of the rooms of a building used mainly as a "Free Library," the books of a Subscription Library were accommodated, and were under the control of the librarian of the Free Library. After a year's circulation, the books were given, absolutely, to the Free Library.

It was held that the exemption did not apply.

The LORD PRESIDENT held that to establish a title to exemption it must be shown that the building is used solely for the purposes of the Free Library.

(*p*) 84 L. J. K. B. 2112; 6 Tax Cas. 642.
(*q*) 36 T. L. R. 694.
(*r*) A. C. 500; 65 L. J. Q. B. 672; 75 L. T. 229; 61 J. P. 100; 3 Tax Cas. 491.
(*s*) 34 Sc. L. R. 702; 24 R. 930; 3 Tax Cas. 552.

It was held in *Farmer* v. *Juridical Society of Edinburgh*, [1914] (*t*), that the Juridical Society was not a "literary or scientific institution" within No. VI. of Schedule A (*ante*), as it was only incidentally scientific, being mainly professional.

The following Exemptions under Schedule A also apply :—

Churches and Chapels.

Public Parks and recreation grounds, whether belonging to Corporations or not, when used solely by and held in trust for the public.

Workhouses and Asylums.

Council Schools.

Denominational Schools and Mission Rooms.

Parish Halls, Rooms, and Clubs, Church Institutions, and Sunday Schools, if mainly used for religious purposes. Buildings used exclusively for worship.

See FRIENDLY SOCIETIES, p. 236, TRADE UNIONS, p. 236, and INDUSTRIAL AND PROVIDENT SOCIETIES, p. 236.

The occupation of a servant is the occupation of the employer. Thus, a Bank Manager is not the "occupier" of the residential quarters assigned to him, neither is a policeman as regards a house which adjoins a police station and in which he is compelled to live. (See p. 96.)

Charitable Bequests.—If a charity is entitled to residuary estate and part of that residue is not paid until after the expiration of one year from the death of the testator, such portion of the income which accrued in the period between the expiration of the said year and the date of the said payment to the charity shall be treated as *income of the charity*, as if the residue had been paid to the charity immediately after the expiration of the said year and the assets of the estate, excluding specific legacies, etc., had been apportioned rateably as between the creditors, legatees (other than specific legatees), and persons entitled to the residue.

Charity has the same meaning as in sec. 30 of the Finance

(*t*) 51 Sc. L. T. 643; 6 Tax Cas. 467.

Act, 1920 (p. 399). This provision (sec. 30 of the Finance Act, 1922) allows repayment of tax to the charity on the income in question and was the result of *Barnardo's Homes* v. *Special Commissioners* (1921) (*a*) which decided in the House of Lords that the income up to the date of ascertainment of the residue and distribution thereof was income of the estate and not income of the charity. See also *Rex* v. *Special Commissioners ex parte Shaftesbury Homes* (1922).

Private Act.—A private Act which covered exemption from all Parliamentary rates, taxes, assessments and payments whatever was held in *Stewart* v. *Conservators of the River Thames*, [1908] (*b*), to include income tax.

In *Duke of Argyll* v. *I. R. Commissioners*, [1914] (*c*), it was provided by a special Act of 1871 that an annuity of £6000 per annum for life should be settled upon the Duchess of Argyll, "to be free from all taxes, assessments, and charges." Sec. 187 of the 1842 Act (now 213 of the Income Tax Act, 1918) enacts that no statute granting any salary, annuity, or pension, "free of any taxes, deductions, or assessments," shall extend to Income Tax, but it was held that as the 1842 and the 1871 Acts were inconsistent the latter must prevail.

In *Pole-Carew* v. *Craddock* (1920) (*d*) a local Act of 1790 exempted the proprietors of a ferry and their heirs and assigns from "any tax, rate, or assessment whatsoever, Parliamentary or parochial" on the profits of the ferry. It was held that the ferry was not assessable as the exemption covered taxation which did not exist at the passing of the Act.

CROWN PRIVILEGE.

An Assize Court and police station were held not to be assessable, as being in the service of the Crown. *Coomber* v. *Justices of County of Berks* (1883), H. L. (*e*).

(*a*) 125 L. T. 250.
(*b*) 1 K. B. 893; 77 L. J. K. B. 396; 98 L. T. 900; 5 Tax Cas. 297.
(*c*) 109 L. T. 893; 30 T. L. R. 48.
(*d*) 36 T. L. R. 44.
(*e*) 9 App. Cas. 61; 53 L. J. Q. B. 239; 50 L. T. 405; 32 W. R. 525; 2 Tax Cas. 1.

Municipal Offices.—A Burgh Court, being a Court of Justice, is exempt, but municipal offices and corporation baths are not. *Adam* v. *Maughan* (1889) (*f*).

Premises occupied for the administration of justice and also for municipal purposes, and as private offices, are not exempt. *Brown* v. *Smith* (1901) (*g*).

SCHEDULE C.

Exemption applies to stocks, dividends, or interests of—

Friendly Societies. (See p. 236.)
Savings Banks (p. 236).
Charitable Institutions (p. 236). Sec. 37 of the 1918 Act.
Industrial and Provident Societies (Registered) (p. 236).
Trade Unions (Registered) (p. 236).
National Health Insurance Funds.

See *Queen* v. *Special Commissioners* (1889) (*h*). The Yorkshire Penny Bank claimed repayment of tax deducted from interest on investments, but repayment was restricted to the tax applicable to sums paid to depositors whose annual interest did not amount to £3. The Bank obtained a Rule *nisi* for a mandamus, but the Rule was discharged on the understanding that the said restricted payment be made.

SCHEDULE D.

Yearly Interest on other Annual Payments.—Charitable Institutions so far as the income is applied to charitable purposes are exempt (as under Schedule C) (*ante*). (Sec. 37 of the Income Tax Act, 1918—sec. 61 of Income Tax Act, 1842.)

This exemption was held in *Psalms and Hymns* (*Trustees of*) v. *Whitwell* (1890) (*i*), not to apply to trading profits. See also *St. Andrew's Hospital, Northampton* v. *Shearsmith* (1887) (*k*). Sec. 30 (1) (c) of the Finance Act, 1921, provides, however, for

(*f*) 27 Sc. L. R. 64 ; 2 Tax Cas. 541.
(*g*) 39 Sc. L. R. 20 ; 4 F. 431 ; Tax Cas. 435.
(*h*) 2 Tax Cas. 510.
(*i*) 7 T. L. R. 164 ; 3 Tax Cas. 7.
(*k*) 19 Q. B. D. 624 ; 57 L. T. 413 ; 35 W. R. 811 ; 2 Tax Cas. 219.

exemption under Schedule D in respect of profits of a trade carried on by a charity if—

(*a*) the work is mainly carried on by beneficiaries of the charity, and

(*b*) the profits are applied solely to the purposes of the charity.

"Charity" is any body of persons or trust established for charitable purposes only.

In *Rex* v. *Special Commissioners; ex parte Rank's Trustees* (1922) large sums were left in trust for charitable purposes, and exemption was claimed under sec. 37 of the 1918 Act, which exempts interest, etc. under Schedule C and yearly interest or other annual payments under Schedule D when forming part of the income of a body of persons or trust established for charitable purposes only or which are applicable to charitable purposes only "and so far as the same are applied to charitable purposes only." The funds were held for the benefit of such religious or other charitable purposes as the donor should appoint and, failing such appointment, for such charitable purposes connected with the Wesleyan Church as the trustees should determine. It was held that exemption did not apply as the income was not restricted to charitable purposes only.

Bank Interest.—In *College of Preceptors* v. *Jenkins* (1919) (*l*) the college made a loss on working but received interest on bank deposits. It was held that the interest was liable under Case 3 of Schedule D (p. 64) and that the buildings were exempt under No. VI. of Schedule A (*ante*).

Sec. 19 of Finance Act, 1923, exempts salaries of High Commissioners, etc.

Disability Pensions.—Sec. 16 of the Finance Act, 1919, exempts wounds and disability pensions.

War Widows' Pensions for Children.—Sec. 27 of the Finance Act, 1922, provides that allowances granted to a war widow for children are not taxable income of the widow.

Scholarships.—Sec. 28 of the Finance Act, 1920, exempts income from a scholarship held by a person receiving full-time instruction at a university, college, school, or other educational

(*l*) 35 T. L. R. 447; 7 Tax Cas. 162.

establishment, and defines "scholarship" as including "an exhibition, bursary, or other similar educational endowment."

War Stocks.—See sec. 46 of the 1918 Act exempted certain War Stock dividends from Income Tax (but not Super Tax) when the securities are in the beneficial ownership of persons not ordinarily resident in the United Kingdom. Sec. 30 of the Finance Act, 1920 and sec. 27 of the Finance Act, 1921, extended this. Sec. 47 and sec. 24 of the Finance Act, 1919, and sec. 28 of the Finance Act, 1922, exempt interest on War Savings Certificates. Sec. 48 of the 1918 Act gives exemption for Tax-compounded War Stocks. The following stocks carry the exemption for non-residence :—

5 per cent. War Loan 1929–47.
5 per cent. Exchequer Bonds 1920, 1921 and 1922.
5 per cent. National War Bonds (all series).
6 per cent. Exchequer Bonds 1920.
4 per cent. Funding Loan 1960–90.
4 per cent. Victory Bonds.
$5\frac{3}{4}$ per cent. Exchequer Bonds 1925.

Interest and other Profits or Gains.—See FRIENDLY SOCIETIES, etc., p. 236.

PENALTIES.

Sec. 107 of the 1918 Act imposes penalties :—

(*a*) not exceeding £20 and treble duty when the proceedings are had before the Commissioners, or

(*b*) £50 when the proceedings are taken in the High Court ; but this does not apply if treble duty in (*a*) has been charged.

Sec. 23 of Finance Act, 1923, substitutes £20 and treble duty for £50, and increases the penalty for aiding and abetting to £500. It also allows proceedings for penalties to be taken within six years of 1920–21 or subsequent year.

The offence to which penalties apply is non-delivery of a return or statement (p. 316), or delivery of a return or statement which is incorrect and negligently made, even though there is no evidence of fraud.

The offence is committed if the person "neglects or refuses" to deliver the lists or statements required.

Neglect to deliver a Schedule required by sec. 139 of the

1918 Act (p. 318), or neglect to appear before the Commissioners when requested, is met with the penalty (*a*) *ante*.

Amendment of Schedule.—Sec. 140 of the 1918 Act provides that :—

> (1) Any person who has delivered a statement or schedule and discovers any omission or wrong statement therein, may deliver an additional statement or schedule rectifying the same, **and shall not thereafter be liable to any proceeding by reason of his omission or wrong statement.**
>
> (2) A person who has not delivered a statement or schedule, within the time limited, may deliver it at any time before proceedings for recovery of a penalty, incurred in respect of such non-delivery, have been commenced, and thereafter no such proceedings shall be taken.
>
> (3) (*a*) If proceedings for recovery of any such penalty have been commenced before the General Commissioners, they may, on proof to their satisfaction that no fraud or evasion was intended, stay the proceedings, either on payment of the costs then incurred, or without any such payment.
>
> (*b*) If proceedings have been commenced in any court, the General Commissioners may certify that in their judgment no fraud or evasion was intended, and the court may, on summary application, stay the proceedings, on such terms as to the court may seem fit.

In *A.-G.* v. *Till*, [1910] H. L. (*m*), it was held that the penalties imposed by sec. 55 (now sec. 107, *ante*) were incurred not solely by non-delivery but by delivery of a return which was not true and correct, even though no fraud had been intended.

The LORD CHANCELLOR said that unless penalties are imposed in clear terms they are not enforceable.

LORD SHAW OF DUNFERMLINE pointed out that Mr. Till did not invoke sec. 129 (now sec. 140) (*ante*), and LORD GORELL, in referring to this section, said :

> "The section was evidently framed to give persons power to make a delivery and to make amendments, and, although it is ambiguously worded, I think the reasonable meaning to give to it is that it permits of the exercise of the powers conferred by it, in proper cases both before and after proceedings and both in respect of non-delivery and delivery of an incorrect statement, so as to mitigate hardships which might otherwise arise."

(*m*) A. C. 50 ; 79 L. J. K. B. 141 ; 101 L. T. 819 ; 26 T. L. R. 134 ; 54 Sol. Jo. 132 ; 5 Tax Cas. 440.

If, therefore, past returns have been made to the best of the judgment and ability of the tax-payer, sec. 140 avoids the levying of penalties, and thus back duty for more than the three preceding years (*post*).

It has been contended, in practice, that sec. 140 only applies to the preceding appeal sections, but Lord Gorell stated in the above case that it covers the case of a statement under sec. 100 of the 1918 Act.

Sec. 30 of the 1918 Act imposes penalties for untrue exemption, etc. claims, but *L. A.* v. *McLaren* (1905), laid down that this applies not to *inaccurate* declarations, but to *false* or untruthful claims.

Repayment.

Repayment of Income Tax overpaid is made by the Revenue in certain cases. Time limits of claim are imposed in some instances and left open in others, but sec. 41 of the Income Tax Act, 1918, enacts—

> Save as hereinbefore provided in the case of income accumulated until the happening of a contingency no claim for repayment of tax under this Act shall be allowed unless it is made within three years next after the end of the year of assessment to which it relates.

Sec. 30 of the Finance Act, 1923, extends the above to six years for 1920–21 year of assessment onwards, and gives twelve months in other cases where "at the end of the year" or less than twelve months was prescribed.

In *re Pettit; Le Feure* v. *Pettit* (1922) a testator left an annuity free of income tax. The annuitant claimed repayment of tax as tax at the full rate had been borne. It was held that the repayment should be divided between the annuitant and the trustees, the latter taking the proportion that the net annuity bears to the total net income of the annuitant after deduction of tax. (See p. 350, etc.)

Exemption, etc.—Exemption, life insurance premiums, personal, etc., and children's allowances are repayable for the three preceding years (see above) and the current year. See p. 351 as to dividends.

Repayment in respect of dividends may be made within three years of the end of the year in which the dividends were declared and became payable.

Double Assessments.—Relief may be granted for the three preceding years in respect of profits doubly assessed.

Schedule A.—In years other than the 1st of a quinquennial, repayment may be made in respect of over-assessment of Schedule A, if the claim is made within twelve months, but this concession is not of universal application, and it is usually necessary to give notice in the autumn of the intention to contest the assessment.

Voids.—(See p. 37.) Repayment in respect of void property may be claimed for the three preceding years, but in some instances the Revenue seeks to restrict the repayment to one year, basing the contention on Rule 4 of No. VII. of Schedule A, which does not speak as to repayment, but allows reduction of the assessment, on proof of voids before the Commissioners.

Charity Property.—Repayment for the three preceding years is allowed for charity property which has been assessed. (See p. 398.)

Schedule B.—If the actual profits of the year are less than the estimated amount which forms the Schedule B assessment, repayment of the difference may be claimed within twelve months of the end of the year of assessment. (See p. 41.)

Schedule D.—On loss made in the current trading year (see p. 373).

Cessation, bankruptcy, death, etc. (See p. 69.)

Bank Interest. (See p. 265.)

Discontinuance, as regards the averages assessed exceeding the actual profits. (See p. 54.)

Commencement, as regards the averages assessed exceeding the actual profits. (See p. 52.)

Schedule E.—Repayment may be claimed when it transpires that the total fees paid or payable for the year are less than the assessment for that year.

Clergymen.—Repayment is made in respect of the following:—

First Fruits, Tenths, Duties and fees on presentation. The basis is the amount paid in the preceding year.

Procurations and Synodals, on the average of the seven preceding years.

Repairs and Fire Insurance premiums of Collegiate Churches, or Chancels of Churches, on the amount expended in the preceding year.

Land Tax.

Parochial Rates on Rent Charge. Amount paid within the year of assessment.

Cost of collection of Tithe where there is a paid agent.

Retrospection.—On a Finance Act introducing a concession of, *e.g.*, repayment, the question of retrospective effect arises, but the Board of Inland Revenue have expressed the opinion that such effect does not exist; thus where, as with the extension of time for claiming the earned rates (introduced by the Finance Act (No. 2), 1915, the repayable period was enlarged from the current year to the three preceding years, the extension was not applied to any year earlier than 1915–1916. Sec. 23 of the Finance Act, 1907, in extending the time for making additional assessments (p. 330) from four months to three years, contained a specific provision against retrospection.

CHAPTER XII

SUPER TAX

The Super Tax, which is an additional Income Tax, and does not affect the latter, was first introduced in the Finance (1909–10) Act, 1910. Super tax applies to all incomes "from all sources," which exceed £2000. The rates, fixed by sec. 15 of the Finance Act, 1920, and continued by the Finance Acts of 1921, 1922 and 1923 are as follows :—

						s.	*d.*
The first £2000						nil.	
		£		£			
For each £1	between	2,001	and	2,500	inclusive	1	6
,,	,,	2,500,	,,	3,000	,,	2	0
,,	,,	3,001	,,	4,000	,,	2	6
,,	,,	4,001	,,	5,000	,,	3	0
,,	,,	5,001	,,	6,000	,,	3	6
,,	,,	6,001	,,	7,000	,,	4	0
,,	,,	7,001	,,	8,000	,,	4	6
,,	,,	8,001	,,	20,000	,,	5	0
,,	,,	20,000	,,	30,000	,,	5	6
,,	over	30,000				6	0

The Super Tax only applies to "individuals."

The graduated rates for super tax apply to the actual excess mentioned, thus an income of £5550 would pay, in addition to Income Tax on the *whole*, Super Tax as follows :—

£		£	*s.*	*d.*
2000	nil			
500	@ 1*s.* 6*d.* =	37	10	0
500	@ 2*s.* 0*d.* =	50	0	0
1000	@ 2*s.* 6*d.* =	125	0	0
1000	@ 3*s.* 0*d.* =	150	0	0
550	@ 3*s.* 6*d.* =	96	5	0
£5550		£458	15	0

Commissioners.—The Super Tax is not within the purview of the District Commissioners, being controlled solely by the Special Commissioners.

Declaration of Liability.—Sec. 7 (3) of the Income Tax Act, 1918, enacts that it shall be the duty of every person liable to Super Tax, to give notice thereof to the Special Commissioners before the 30th September in each year, under a penalty of £50 with a further penalty of £50 for each day the failure continues after judgment for the penalty has been given.

A notice is annually inserted in the *London Gazette*, requiring the declaration.

The provisions of the Income Tax Acts are made applicable to Super Tax.

See sec. 20 of Finance Act, 1923, *re* Ireland.

Married Women.—Sec. 8 of the 1918 Act, as amended by sec. 26 of the Finance Act, 1919, provides that, on an application being made by a husband or wife within six months before the 6th July in any year of assessment, super tax shall be charged as if they were unmarried, but the incomes must be aggregated in arriving at the total income, and the Super Tax on this total income shall be divided between the husband and wife in proportion to their respective incomes. The total amount payable shall not be less than if an application had not been made. Sec. 26 of the Finance Act, 1919, provides that, on persons marrying during the year of assessment, the application may be made at any time before the 6th July in the *following* year. (See also *L. A.* v. *Allan* (1913) (*a*). (See pp. 272, 420.)

In *I. R.* v. *Lockhart-Leith* (1923) a *husband* cannot be assessed for pre-nuptial income of his wife; but see p. 420.

Death during the Year.—Sec. 6 of the Income Tax Act, 1918, provides that on the death of a person liable to Super Tax, the proportionate part of the year's Super Tax, subsequent to death, shall not be payable.

In *Wyndham* v. *I. R.* (1920) (*b*) a husband and wife were separately assessed to Super Tax, and the husband died during the year of assessment. The wife contended that she was only liable at the rate applicable to her income plus her husband's income for the portion of the year to the date of his death. It was held that sec. 6 did not refer to married persons but only to the liability of the deceased, and that the husband and wife

(*a*) 57 S. J. 378. (*b*) 124 L. T. 95.

had severed their liabilities and the law did not provide for an alteration of rates on death of one. (See *re Ward ; Harrison* v. *Ward*, p. 272.)

Additional Assessments.—Under sec. 7 (7) additional assessments may be made in respect of the three preceding years. Sec. 29 (2) of the Finance Act, 1923, increases this to six years as regards the year of assessment 1920–21 and onwards, but not for executors.

Calculation of Total Income.—The total income is by sec. 5, as amended by the Finance Act, 1920, that from all sources for the *preceding* year "*estimated in the same manner as the total income from all sources is required to be estimated in a return made in connection with any claim for a deduction from assessable income*" (p. 341). Sec. 15 (4) of the Finance Act, 1920, provides that, in estimating the "total income" for Super Tax, earned income shall not be reduced by the 10 per cent. relief (p. 342). Sec. 16 of the said Act provides that, in ascertaining the amount of the "assessable" income, 10 per cent. shall be allowed, for Income Tax purposes, for earned income, and sec. 17 provides that an individual who makes a return of his total income shall be entitled, in arriving at his taxable income for Income Tax, to have deductions made "*from* his *assessable* income" for personal allowances, etc. Sec. 5 (*ante*) bases Super Tax on the total income in a claim *for* deduction from assessable income, not on the net income *after* deduction of the allowances. In *Davis* v. *I. R.* (1922) the Court of Appeal decided that the personal allowances cannot be deducted for Super Tax nor the amount of Income Tax paid, but the following deductions are allowable by sec. 5 (3) of the Income Tax Act, 1918.

(1) Full repairs, etc., of property assessed under Schedule A, so far as such repairs are permitted to be deducted in arriving at the net Schedule A assessment (p. 26).

(2) In the case of a person in the service of the Crown abroad, such necessary expenses as the Treasury may allow.

Income chargeable with Income Tax by deduction, is

income for the year "in which it is *receivable*, and any deductions allowable on account of any annual sums paid out of the property or profits of the individual, shall be allowed as deductions in respect of the year in which they are payable, notwithstanding that the income or the annual sums, as the case may be, *accrued in whole or in part before that year*."

This provision was of debatable construction as, if the word "receivable," read with the words as to accrual, fixes the income as that which could have been *received* in the year had the recipient so desired, an inequity is created in that, on *e.g.* a distribution of accumulated dividends which have been accumulating for many years, a person may be liable to Super Tax whereas his ordinary average income may be considerably below the Super Tax limit. The intentions of the framers of the section may have been merely to create a distinction between Super Tax and Income Tax. With the latter, dividends are taken, in the hands of the recipient, as being income for the period during which the profits out of which they are paid, accrued, a course which is necessitated by the fact that dividends are a portion of the profits, and any Income Tax deducted from such dividends is Income Tax paid on behalf of the recipient. This method, which introduces complications in division of a dividend between two years, is unnecessary with Super Tax, as there is no connexion whatever between the latter and the profits.

Moreover, the word "receivable" had no technical meaning in the sense of referring to the *declaration* of dividends, and aggregable income for Income Tax purposes is "annual" income, whereas, *e.g.* accumulated dividends are not.

In practice, "receivable" is taken generally as meaning when the income could have been actually received, and *Duncan* v. *I. R.* (1923) laid down that dividends are income of the year in which they are declared. See also *Hurll* v. *I. R.* (1922).

Reserves.—See *Stocker* v. *I. R.* (1919) (*c*) where a percentage of the profits appropriated to a Reserve Fund by agreement with the trustees was admitted as a deduction.

Free of Tax.—In *Samuel* v. *I. R.*, [1918] (*d*) a dividend

(*c*) 35 T. L. R. 607. (*d*) 2 K. B. 553.

was received " free of tax " and it was held that the tax should be added to the dividend for Super Tax. (See p. 193.)

Sec. 48 of the 1918 Act provides that, in the case of War Stocks issued subject to the provision that the interest thereon was not subject to Income Tax but subject to Super Tax, the Super Tax should be charged on a gross amount giving, after deduction of Income Tax at the highest rate, the interest received. (See p. 193.)

In *re Gretton's Indenture; Hood* v. *Lady Byron* (1922) a testator gave, by will in 1882, a clear yearly sum of £6000 to B during her life, free of legacy duty, Income Tax and all other duties whatsoever, and directed, if B. desired, the purchase of an annuity. By an indenture in 1883 B. agreed to accept an annuity of £5000 free of legacy duty, etc. (*ante*) and that stock might be purchased, the interest on which would amount to the annuity plus tax and duties, say £5300. Stock was purchased and the trustees, by deed poll in 1888, agreed to pay the annuity of £5000 and Income Tax and all duties whatsoever. On the purchase of the stock B. executed a release of the right under the will to require the trustees to purchase an annuity. It was held that the effect of the provisions in the indenture as carried out by the deed poll secured to B. an annuity which was no longer an annuity under the will but an annuity payable by virtue of those provisions and that the agreement as to payment of the annuity and tax infringed Rule 23 (2) of the rules to all Schedules (p. 266), and therefore the annuity was not payable free of either income tax or super tax.

Income Tax Assessments Binding.—In *Inland Revenue Commissioners* v. *Brooks*, [1915] H. L. (*e*), it was held that, for the purpose of arriving at assessments to Super Tax, the profits from a business need not be taken as those fixed for Income Tax purposes by the District Commissioners, and that the taxpayer may prove what his income was for the preceding year. Sec. 18 of the Finance Act, 1915 (now sec. 5 (2)

(*e*) A. C. 478; 84 L. J. K. B. 404; 112 L. T. 523; 31 T. L. R. 89.

of the 1918 Act), however, specifically overrules this by providing that when an Income Tax assessment has become final and conclusive, that assessment shall be final for Super Tax for the following year, and no adjustment on account of diminution of income or loss (p. 373), shall operate for Super Tax unless such adjustment has previously been made for Income Tax purposes.

Sale of Business.—In *Bartlett* v. *Commissioners of Inland Revenue*, [1914] (*f*) the appellant was assessed to Super Tax for the year 1909–10 on the profits of his business for the year 1908–9. The business was sold on the 28th December, 1908, and the portion of the average assessable profit from 6th April to 28th December, 1908, was the amount adopted. It was held that the Super Tax assessment was correctly made, and that sec. 24 (3) of the Finance Act, 1907 (now rule 8 (2) of Cases 1 and 2 of Schedule D (p. 54)), relating to Discontinuance (p. 54) did not apply.

Farming Losses.—In *Hill* v. *Inland Revenue Commissioners*, [1912] (*g*), it was held that a person assessable to Super Tax could claim deduction in respect of farming losses, although he had not so claimed within six months of the end of the preceding year of assessment within sec. 23 of the Customs and Inland Revenue Act, 1890 (now sec. 34 of the 1918 Act) (see p. 373), to be allowed the loss for Income Tax purposes, and he could claim the deduction for Super Tax purposes even though the claim was not made within six months of the end of the preceding year. This case is also overruled by sec. 5 (2) (*ante*).

Widow's Annuity.—In *re Crawshay's Settled Estate* (1915) (*h*), an annuity of £1500, free of all deductions except Income Tax, was appointed by a deed poll under a power of appointment given to the husband of the recipient under his father's will. In a codicil to the husband's will the widow was granted, during widowhood, such an annual sum as, together with the income for the time being received by her under the appointment, was to make an annual sum of £2000 clear of all deductions including Income Tax. Under a second codicil the

(*f*) 137 L. T. 186. (*g*) S. C. 1246; 49 Sc. L. R. 960.
(*h*) 60 S. J. 275.

£2000 was increased to £2500 clear of all deductions including Income Tax. The widow was liable to Super Tax, and it was contended that the trustees should pay such Super Tax out of the testator's residuary estate or otherwise. It was held that the annuity was free from all deductions for which the trustees were accountable, and that the widow, being accountable for Super Tax, cannot require the trustees to pay it.

Retrospection.—In *Fitzgerald* v. *I. R.* (1919) (*i*) a barrister who had been assessed under Schedule D for his profits as a practising barrister for the year to the 5th April, 1916, retired in March, 1916, and was not assessed to Income Tax thereon for 1916–17. It was held that a Super Tax assessment for 1916–17 based on the 1915–16 Income Tax assessment was correctly made as Super Tax was retrospective.

In *I. R.* v. *Brookes* (1923) a woman married on the 12th March, 1914, and was correctly assessed for 1914–15 on her income from the 6th April, 1913, to the 11th March, 1914.

See also *Murray* v. *I. R.* (1923) *re* marriage in year of assessment.

Residence Abroad.—In *Crane* v. *I. R.* (1919) (*k*) a person resided abroad for the year of assessment but resided in the United Kingdom for the preceding and earlier years. It was held that there was liability.

In *Brooke* v. *I. R.* (1918) (*l*) it was held that there is liability irrespective of residence here or abroad.

See *I. R.* v. *Huni* (1923), where it was held that notices served by post abroad were valid.

Bonus Shares.—In *I. R.* v. *Blott* (1921) (*e*) distributed fully paid-up shares as a bonus. The distribution was out of accumulated profits, etc., and there was no option to receive the bonus in cash. It was held by the House of Lords that there was no liability to Super Tax as the distribution was of capital and the company had not parted with any of its assets so as to reduce the assets. LORD HALDANE held that the transaction was one in which the company was in law dominant, on the question whether the money in question was to be capital or income for all purposes, following *Bouch* v. *Sproule*. His Lordship said that "it is a matter of principle

(*i*) 35 T. L. R. 459. (*k*) 35 T. L. R. 694.
(*l*) 1 K. B. 257; 87 L. J. K. B. 279; 118 L. T. 321.
(*m*) 125 L. T. 497; 2 A. C. 171.

within the power of an ordinary joint stock company with articles such as those in the case before us to determine, conclusively against the whole world. Whether it will withhold profits it has accumulated from distribution to its shareholders as income, and as an alternative not distribute them at all, but apply them in paying up the capital sums which shareholders electing to take up unissued shares would otherwise have to contribute. If this is done the money so applied is capital and never becomes profits in the hands of the shareholder at all. . . . His new shares do not give him an immediate right to a larger amount of the existing assets." Lord Cave said that "the transaction took nothing out of the company's coffers, and put nothing into the shareholders' pockets." This case was distinguished in *Pool* v. *Guardian Investment Trust Co.* (1921) (*n*), where a company held shares in the Union Pacific Railroad Co. which, in 1914, declared out of its accumulated profits an extra dividend on its common stock, part in cash and part in shares in the Baltimore and Ohio Railroad Co. in which company part of the reserves of the Union Pacific were invested. The Guardian Co. sold their shares in the Baltimore Co. and credited the proceeds to capital account. It was held that the distribution was not of capital but of profits and the proceeds of the sale were assessable. Sankey, J. applied a metaphor to *I. R.* v. *Blott* (*ante*) of a reservoir: "From the reservoir of capital certain proceeds were allowed to flow down the outlet stream, but these proceeds were not allowed to reach the shareholder. The company enlarged the area of the reservoir and put back the proceeds into the enlarged reservoir . . . in the present case just the opposite has happened. The proceeds have been allowed to flow down the outlet stream but they have not been put back into capital. They have been allowed to reach the shareholders in the form of a cash payment and a dividend in specie of the shares of another company."

See *I. R.* v. *Burrell* (1923), where undistributed profits distributed by a liquidator were not liable to Super Tax.

Bonus.—In *I. R.* v. *Sanderson* (*o*). In July, 1916, the re-

(*n*) 57 L. T. R. 345; 12 A. C. 385.
(*o*) 126 L. T. 540.

spondent negotiated with a financial corporation for the sale at £3 a share of the whole of his shares in a company in which he was managing director (*i.e.* 79,920 out of a total issued ordinary shares of 80,552). The proposed sale was subject to the condition that, prior to transfer, the respondent should use his controlling interest to persuade the company to declare out of its undivided profits a bonus or special dividend of 10*s.* per share to be taken by him as part of the purchase price. This bonus was declared free of Income Tax and of Super Tax, up to a sum not exceeding £6000, and, in September, 1916, the respondent received £39,960 from the company. The agreement for sale was first put into writing in October, 1916, and referred to the purchase price as £2 10*s.* per share and to the bonus. It was held by the Court of Appeal that the £39,960 plus income tax was liable to Super Tax as there was not evidence of the existence of an enforceable agreement prior to October, 1916.

Loans.—In *I. R.* v. *Sansom* (1921) (*p*) a business was converted to a limited company and 2499 out of 2500 shares taken up by the former proprietor. The other share went to a daughter. No dividend was declared, but the former proprietor drew sums as loans. It was held that these loans were not liable to Super Tax. See now sec. 21 of the Finance Act, 1922 (p. 425).

Partnership.—See p. 352 for ascertainment of partnership income for Super Tax.

THE FOLLOWING REGULATIONS HAVE BEEN MADE BY THE COMMISSIONERS OF INLAND REVENUE IN PURSUANCE OF SEC. 72 (8) OF THE FINANCE (1909–10) ACT, 1910 (NOW SEC. 7 (8) OF THE 1918 ACT).

The Special Commissioners shall serve a notice on every person required by them to make a return of his total income from all sources. Such notice shall be in the form hereto

(*p*) 125 L. T. 37.

attached or in such amended form as the Commissioners of Inland Revenue shall approve.

On the making of an assessment by the Special Commissioners they shall cause notice to be served as hereinafter mentioned on the person assessed of the amount of the assessment and of the duty charged thereon.

All liability to the Super Tax shall be assessable at the office of the Special Commissioners, London, and appeals shall be heard in London, Edinburgh, and Dublin, and at such other towns as the Commissioners of Inland Revenue may direct.

A person aggrieved by an assessment made upon him shall at any time within twenty-eight days from the date of the service of the notice of such assessment, or within such further time as the Special Commissioners shall allow, be entitled to give notice to the Special Commissioners of his intention to appeal to them against the assessment, and every such notice shall specify the grounds of appeal.

The super tax payable shall be remitted by the person assessed to the Accountant-General of Inland Revenue, at his office, Somerset House, London, on or before the 1st January in each year.

Any notice required to be served on any person under these regulations may be either delivered to such person or left at his usual or last known place of abode, or sent by post by (prepaid) registered letter addressed to such person at his usual or last known place of abode, and such service shall be deemed to be sufficient service for the purpose of these regulations.

As the ordinary provisions of the Income Tax are made applicable to Super Tax they are not repeated in this Chapter.

Sec. 22 of the Finance Act, 1922, allows the Special Commissioners to require details of the several sources of income and of deductions claimed under a penalty of £50 and £50 for each day for which the offence continues after judgment has been given for the penalty.

Example.—The following example for 1922–23 assessment shows the constitution of assessment to Super Tax. Assume that a person has the following sources of income.

(*a*) *Profits of trade*, £2600. The average of the three years ended at such date in the year to 5th April, 1921, as the Accounts are usually made up to. This amount would also form the Income Tax assessment for 1921–22 less 10 per cent. (up to £200). This 10 per cent. is not allowable for Super Tax (p. 342).

(*b*) *Property*, £560 net income in the year to, *e.g.*, 31st March, 1922. The basis adopted for Super Tax is the net Schedule A assessments, *i.e.* the gross less allowances for repairs, etc. (p. 26). Assuming that the Schedule A assessments were £1000, allowances for repairs, management expenses (p. 27), voids, etc., actually admissible, £400, and that Mortgage interest of £200 was payable in 1921–22, the aggregable income for Super Tax would be £400. The Schedule A is not *solely* applicable as the measure of the income from property, as when, *e.g.* a tenant has a beneficial occupation—as shown by his rent being less than the net Schedule A—part of the Schedule A has to be *borne* by the tenant exactly as if he were owner of that portion of the premises represented by the difference between the Schedule A and the rent. It is thus obvious that to compel the owner to include the full Schedule A, and the tenant the difference in question, would constitute double assessment which in the House of Lords in *Sugden* v. *Leeds Corporation*, [1913] (p. 283) was held to be insupportable.

(*c*) *Dividends and Interests*, £1850 receivable in the year 1921-22 before deduction of Income Tax.

The total income for Super Tax would therefore be as follows :—

(*a*)	£2600
(*b*)	400
(*c*)	1850
	£4850

The applicable rates in the £ would be:—

£		£	s.	d.
2500			nil.	
500	@ 1s. 6d. =	37	10	0
500	@ 2s. 0d. =	50	0	0
1000	@ 2s. 6d. =	125	0	0
850	@ 3s. 0d. =	127	10	0
£4850		£340	0	0

Undistributed Income of Private Companies.—Sec. 21 of the Finance Act, 1922, was introduced owing *inter alia* to the position which arose under *I. R.* v. *Blott* (*ante*) which held that a distribution of bonus shares was not liable to Super Tax and to the practice of the practically sole shareholders of private companies taking loans from the company instead of dividends, thus avoiding Super Tax. Sec. 21 applies, for 1923–24 Super Tax year of assessment and onwards, to a company—

(*a*) registered since 5th April, 1914, under the Companies Act, 1908 to 1917;

(*b*) in which the shareholders are not more than fifty, excluding (1) any shareholder who is a trustee or nominee for some person otherwise owning or beneficially interested in shares in the company, or (2) an employee of the company, or (3) the wife or unmarried infant child of a beneficial owner of shares in the company;

(*c*) which has issued no shares by public subscription;

(*d*) which is under the control of not more than five persons. A company is under the control of any persons where the majority of the voting power or shares is in the hands of those persons or relatives or nominees or where the control is by any other means whatever in the hands of those persons.

"Relative" is defined as meaning a husband or wife, ancestor or lineal descendant, brother or sister, and "nominee" as a person who may be required to exercise his voting power on the directions of, or holds shares directly or indirectly on

behalf of, another person. "Employee" does not include any governing director, managing director, or director.

Persons in partnership and persons interested in a deceased's estate or in a trust shall be deemed to be a single person.

The section provides—

(1) If a company has not, *within a reasonable time* after the end of any year or other period ending after 5th April, 1922, for which accounts have been made up, distributed to members so as to render the distribution liable for Super Tax, a *reasonable part* of its actual income from all sources for the said year or period, the said income may be treated as liable to Super Tax and apportioned between the members. In ascertaining the amount regard shall be had "not only to the current requirements of the company's business but also to such other requirements as may be necessary or advisable for the maintenance and development of that business."

The term "member" includes any person having a share or interest in the capital or profits or income of the company.

(2) The Super Tax shall be assessed on the member in the name of the company. The notice of charge is to be served on the member and, if the latter does not within twenty-eight days elect to pay the tax, a notice of charge is to be served on the company, and the latter is then liable to pay the tax. There is also power to recover from the company if the member elects to pay and does not pay by 1st January, or within twenty-eight days of his election to pay, whichever is the later.

(3) Undistributed income charged under sec. 21 shall not again be charged when distributed.

(4) Corporation Profits Tax for the period for which the Super Tax is paid shall be repaid.

(5) The First Schedule of the Act provides as follows :—

> 1. A company which is aggrieved by any direction given under section twenty-one of this Act may appeal to the Special Commissioners against the direction by giving notice of appeal to the Clerk to the Commissioners within twenty-one days after the date of the notice, and the Commissioners shall hear and determine the appeal, subject as herein provided, and the pro-

visions of the Income Tax Acts, relating to appeals against assessments shall, with any necessary modification, apply for the purposes of an appeal under this provision.

2. If either the Company or the Commissioners of Inland Revenue are dissatisfied with the determination of the Special Commissioners on any appeal under the foregoing provisions of this schedule, they may, on giving notice to the Clerk to the Special Commissioners within twenty-one days after the determination, require the appeal to be reheard by the Board of Referees and the Special Commissioners shall transmit to the Board any document in their possession which was delivered to them for the purposes of the appeal.

The Board shall rehear and determine the appeal and shall have and exercise the same powers and authorities in relation to the appeal as the Special Commissioners might have and exercise, and the determination of the Board thereon shall be final and conclusive :

Provided that section one hundred and forty-nine of the Income Tax Act, 1918 (which relates to the statement of a case on a point of law), shall apply with the necessary modifications in the case of any such rehearing and determination as it applies in the case of appeals to the General or Special Commissioners under the said Act.

3. The provisions of subsection (6) of section seven of the Income Tax Act, 1918, relating to the representation of the Crown on super-tax appeals shall, with the necessary modifications, apply to any appeal under this schedule.

4. The Special Commissioners may, at any time by notice in writing, require any company which appears to them to be a company to which section twenty-one of this Act applies, to furnish them with—

(*a*) a statement of the actual income of the company from all sources, together with a copy of the company's accounts for any year or other period for which the company's accounts have been made up and such particulars as the Commissioners may reasonably require as to the income of the company and the manner in which the income has been dealt with ; and

(*b*) a statement for the same period of the names and addresses and particulars of the respective interests of all members of the company.

5. Where the Special Commissioners have issued a notice requiring a company to furnish them with particulars under paragraph 4 of this schedule as respects any year or other period, and the auditor of the accounts of the company is a member of an incorporated society of accountants, the directors may, if they think fit, make and submit to the auditor such a statutory declaration as is hereinafter mentioned, and in such case the following provisions shall have effect :

(*a*) The directors of the company shall make a statutory declaration as to—

(i) The amount which they regard, or regarded, as proper to be retained in the business out of the income of that year or other period ; and

(ii) The amount (if any) which they propose to recommend for distribution, or which has been distributed ;

setting out the reasons for such retention and giving such information as will enable the auditor to form an opinion whether the amount (if any) proposed for distribution or distributed, having regard to such requirements as are mentioned in the proviso to subsection (1) of the said section twenty-one, would be, or was, a reasonable part of the income for such year or other period ;

(*b*) If the auditor—

(i) is satisfied that the information disclosed in the declaration is sufficient to enable him to form an opinion as to whether the proposed distribution or distribution (if any) would be or was a reasonable part of the income for such year or other period as aforesaid ; and

(ii) is satisfied that a primâ facie case is made out by the reasons and information given in the declaration that the proposed distribution or distribution (if any) would be or was reasonable ;

he may so certify :

(*c*) The certificate, together with the statutory declaration, shall be sent to the Special Commissioners who, unless they see reason to the contrary, shall take no further action in the matter.

6. In computing the actual income from all sources of a company for any year or period, the income from any source shall be estimated in accordance with the provisions of the Income Tax Acts relating to the computation of income from that source ; except that the income shall be computed by reference to the income for such year or period as aforesaid and not according to an average of more than one year or by reference to any year or period other than such year or period as aforesaid.

7. If the company fails or refuses on being so required in accordance with the provisions of this schedule to furnish a statement of actual income from all sources or renders a statement with which the Special Commissioners are not satisfied, the Commissioners may make an estimate of that income to the best of their judgment.

8. The apportionment of the actual income from all sources of the company shall be made by the Special Commissioners in accordance with the respective interests of the members, and

the income as apportioned to each member shall, for the purpose of super-tax, be deemed to represent his income from his interest in the company for the year or other period and shall be included in the statement of his total income or in an amended statement of total income which the Special Commissioners are hereby authorised to require and shall be deemed to be the highest part of that income.

9. The income apportioned to a member of a company under section twenty-one of this Act shall, for the purposes of super-tax, be deemed to have been received by him at the date to which the accounts of the company for the year or period were made up.

10. Notice of any apportionment made by the Special Commissioners shall be given by serving on the company a statement showing the amount of the actual income from all sources adopted by them for the purposes of section twenty-one of this Act, and either the amount apportioned to each member or the amount apportioned to each class of shares, as they think fit.

A company which is aggrieved by any notice of apportionment shall be entitled to appeal to the Special Commissioners on giving notice to their clerk within twenty-one days after the date of the notice, and those Commissioners shall hear and determine the appeal and all the provisions of the Income Tax Acts and any regulations made thereunder relating to appeals against assessments and to cases to be stated for the opinion of the High Court shall, with any necessary modification, apply for the purposes of any such appeal.

11. Any person in whose name any shares of a company are registered shall, if required by notice in writing by the Special Commissioners, state whether or not he is the beneficial owner of those shares, and if not the beneficial owner of those shares or any of them shall furnish the name and address of the person or persons on whose behalf the shares are registered in his name.

If any person on being so required neglects or fails to comply with the notice within the time limited by the notice, he shall be liable to a penalty of twice the amount of super-tax that would be chargeable at the highest rate in respect of the amount of the income apportioned to such shares.

12. In this schedule the expression "Board of Referees" means the Board of Referees for the purposes of Rule 6 of the rules applicable to Cases I. and II. of Schedule D.

Revocable Trusts.—Super Tax and Income Tax have been avoided by income being given to *e.g.* children under revocable trusts, and sec. 20 of the Finance Act, 1922, provides that the following income shall be income of the donor :—

(1) Income of which a person is able or has at any time

since 5th April, 1922, been able without the consent of any other person, *to obtain for himself the beneficial enjoyment,* by means of any power of appointment, power of revocation, or otherwise by virtue or in consequence of a disposition made directly or indirectly by himself.

(2) Income which, by virtue of or in consequence of any disposition made directly or indirectly after 1st May, 1922 (other than a disposition for valuable and sufficient consideration) is payable to or applicable for the benefit of any person for a period which cannot exceed six years.

(3) Income which, by virtue or in consequence of any disposition made directly or indirectly after 5th April, 1914, is payable to or applicable for the benefit of a child of the donor for some period less than the life of the child. This applies only if and so long as the child is an infant and unmarried.

In cases under (1) where such a power can be exercised by a person with the consent of the wife or husband of that person, the power shall be deemed to be exerciseable without the consent of another person except where the husband and wife are separated either by agreement or under Order of the Court. Where any such power is exerciseable by the wife or husband of the person who made the disposition, the power shall be deemed to be exerciseable by the person who made the disposition.

The provision of (3) shall not apply as regards any income derived from capital which, at the end of the period during which that income is payable to or applicable for the benefit of the child, is required by the disposition to be held on trust absolutely for, or to be transferred to, the child, or any income which is payable to or applicable for the benefit of a child during the whole period of the life of the person by whom the disposition was made. Income shall not be deemed to be payable to or applicable for the benefit of a child for some period less than its life by reason only that the disposition contains a provision for the payment to some other person of the income in the event of the bankruptcy of the child, or of an assignment thereof, or a charge thereon being executed by a child.

The section allows the donor to recover the tax from the recipient of the income.

Income covered by the section is deemed to be the highest part of the income.

" Child " includes a step-child or illegitimate child.

" Disposition " includes any trust, covenant, agreement or arrangement.

If a person obtains a repayment of Income Tax in excess of what he would be entitled to but for (2) and (3) *ante*, the excess shall be paid by him to the trustee or other person to whom the income is payable.

Legacy Duty.—In *Colville* v. *I. R.* (1923) legacy duty was paid over a period of years and the income received by a legatee was reduced accordingly. It was held that the legacy duty was part of the legatee's Super Tax income.

Crown Preference.—See *Commercial Bank of Scotland, Ltd.* v. *Campbell* (1923).

CHAPTER XIII

CORPORATION PROFITS TAX

The Corporation Profits Tax, introduced by the Finance Act, 1920, is, in effect, an additional Income Tax restricted to *companies.*

It is charged on "Accounting Periods," which are normally a year or, where accounts are made up for a period other than a year, such period not exceeding twelve months as the Board of Inland Revenue determines, and, if this necessitates a division of *e.g.* an account for a longer period than a year the apportionment "shall be made in proportion to the number of months or fractions of months in the respective periods representing the divided periods (sec. 54 of the Finance Act, 1920).

Basis.—The tax is 5 per cent. of the profits in excess of £500. With an Accounting Period less than a year, the £500 exemption is proportionately reduced.

Sec. 36 of the Finance Act, 1923, reduces the tax to $2\frac{1}{2}$ per cent. from the 1st July, 1923, and the 10 per cent. (below) to 5 per cent.

An alternate basis (sec. 52 (1) (b)) for a *British* Company (when this basis gives a smaller liability) is 10 per cent. of the profits, as calculated under the Act, after deducting any interest or dividends *actually paid out of those profits* at a fixed rate, on the following—when issued before 4th August, 1920 :—

(*a*) debentures,

(*b*) debenture stock,

(*c*) preference shares (so far as the dividend paid thereon is at a fixed rate),

(*d*) permanent loan.

This provision also applies to (*a*) (*b*) and (*d*) issued after 4th August, 1920, for replacing an equal amount of debentures, debenture stock, or permanent loan.

Companies Charged.—The tax applies by sec. 52 (2) to—

(*a*) A *British* company carrying on "any trade or business, or any undertaking of a similar character, including the holding of investments. See p. 438.

(*b*) A *Foreign* company carrying on in the United Kingdom "any trade or business, or any undertaking of a similar character, *so far as those profits arise in the United Kingdom.*"

Exemptions.—The following exemptions apply up to 31st December, 1925 :—

(1) Public utility companies (carrying on *in the United Kingdom* any gas, water, electricity, tramway, hydraulic power, dock, canal, or railway undertaking, and which, under any Act, is precluded either from charging any higher price, or from distributing any higher rate of dividend than that authorized by the Act. The profits of a company derived from a public utility company in which it owns a controlling interest and directs, or is entitled to direct, the management, are similarly exempt (sec. 58 Finance Act, 1921).

See *Investor's Mortgage Security Co., Ltd.* v. *Sinton.*

(2) Any company being a building society, including a department of any society registered under the Industrial and Provident Societies Act, 1893, organized for providing house-building or house-purchase schemes for its members.

Definitions (sec. 52 (3)).—"*Company*" is defined as meaning any body corporate so constituted that the liability of its members is limited, but as excluding any company formed before 4th August, 1920, whose assets consist wholly of stock or other securities issued by any public authority and formerly held by the persons by whom the company was formed.

"*British Company*" means any company incorporated by or under any laws of the United Kingdom.

"*Foreign Company*" means any other company.

Examples.—Assume that the "profits" (*post*) of a company for the year to 31st December, 1922, are £5000.

The liability would be 5 per cent. of (£5000—£500) = £225.

If, however, the company paid debenture interest of £450

and preference dividend of £3500, the alternate liability would be—

		£
Profits		5000
less Debenture interest	£450	
Preference dividend	3500	
		3950
10 per cent.)		1050
		£105

Computation of Profits.—Sec. 53 deals with the computation of profits, and provides that profits shall, subject to the following specific provisions, be computed on Schedule D principles (p. 46), whether the profits are assessable under the schedule or not, but there is no "average," the profits of the Accounting Period being adopted.

The following provisions apply :—

(1) **Items included in Profits.**—(*a*) All profits arising from lands and buildings forming part of the assets of the business. Thus there is no deduction for profits charged under Schedule A (pp. 16, 95).

(*b*) Interest, dividends, and other income from investments or any other source (these items being excluded for Schedule D as they are taxed by deduction). This does not include interest, etc., received, directly or indirectly, from a company liable to be assessed to Corporation Profits Tax thereon, as that interest, etc., is charged on the latter company.

(*c*) In the case of *Mutual Trading concerns* the surplus arising from transactions with members and, in the case of a society registered under the Industrial and Provident Societies Act, 1893 (co-operative societies, etc.) (p. 160) any sums paid by way of bonus, discount, or dividend on purchases shall be treated as trade expenses and allowed.

(2) **Items Deductible.**—(*a*) Interest on money borrowed for the purposes of the company except interest on "*permanent* loans" (*post*).

(*b*) Rent.

(*c*) Royalties.

(*d*) Share of profits to employees under a profit-sharing scheme.

(*e*) Any other payment on which Income Tax is deducted at the source, not being dividends or other payments for distribution of profits.

Items (*a*) to (*c*) are, for Income Tax, taxed by deduction.

The deduction for (*a*) and (*c*) does not apply when the payment is to a person having a "*controlling interest*" in the company, whether directly or indirectly, or whether solely or jointly with other persons.

"Permanent loan" is defined by sec. 52 (3) as meaning a loan of a permanent character which is secured by mortgage or debentures or otherwise on the assets or income of a company and which, if subject to repayment, is subject to repayment at not less than three months' notice.

By sec. 57 of the Finance Act, 1921, if not less than *half* the gross income of a company is from rents or profits of lands or tenements in the United Kingdom, a deduction is allowed of interest on mortgages on such lands and tenements, but not for interest on debentures *charged on all the assets of* the company.

(*f*) Repayment of Excess Profits Duty in respect of a *previous* Accounting Period.

(*g*) Excess Profits Duty, Mineral Rights Duty, and Excess Mineral Rights Duty for the same Accounting Period and Excess Profits Duty or similar duty in any country outside the United Kingdom.

See *Lane* v. *I.R.* (1923).

(3) **Items Non-deductible.**—(*a*) Annual value of premises used for the purposes of the company (the deduction is allowed for Schedule D as the value is charged under Schedule A, p. 95).

(*b*) Permanent loan interest (*ante*).

(*c*) Remuneration, in excess of £1000 per annum, of any director, manager, or other person concerned in the management of a company, who has a controlling interest in the company, whether directly or indirectly, and whether solely or jointly with any other person.

(*d*) In respect of an artificial transaction which has reduced the profits.

(*e*) Wear and tear, renewals, obsolescence, or any expenditure of a capital nature for the development of the company or otherwise, except such as is allowable for Income Tax (pp. 132, 163).

(*f*) Income Tax.

(*g*) Corporation Profits Tax (this is allowable for Income Tax purposes).

Life Assurance.—The part of the profits allocated to, reserved for or expended on behalf of policy holders or annuitants shall be apportioned between the profits of the company *directly liable* to Corporation Profits Tax (p. 247) and the profits not so liable, and a deduction allowed of the amount so apportioned to the profits so liable.

Where a company carries on life assurance business in conjunction with other insurance business, the life assurance business shall, for the purpose of apportionment *only*, be treated as if it were a separate business carried on by a separate company.

Subsidiary Companies.—Where a company, in its own name or that of a nominee, holds the whole of the ordinary capital of another company (or so much as, under the general law, can be held by a single shareholder), the profits of the subsidiary company may, if desired by the principal company, be treated as if they were the profits of the principal company as if the subsidiary company were a board of the principal company, but, in that case, for the purpose of arriving at the alternate basis of assessment (p. 432) no deduction shall be allowed in respect of payments by the subsidiary company to the principal company or any other company in which the principal company has a holding as above.

Contracts.—If a contract extends beyond a particular Accounting Period and is only partially performed in an Accounting Period, there shall, unless the Board of Inland Revenue owing to any special circumstances—otherwise

directs, be attributed to each of the Accounting Periods in which the contract was partially performed such proportion of the entire profit or loss (estimated if necessary) in respect of the complete performance of the contract as shall be properly attributable to such Accounting Periods respectively having regard to the extent of performance in such periods.

Returns, etc. (sec. 55).—(*a*) Returns and "such other particulars" as may be required by the Revenue, are to be furnished, within two months after requirement, by the secretary or other officer performing the duties of secretary or, in the case of a foreign company, by any agent, manager, factor, or representative.

(*b*) A person liable to make a return is also liable to give notice of liability if no request for a return has been received, within six months of the end of the Accounting Period.

The penalty for non-compliance with (*a*) or (*b*) is, on summary conviction, a fine not exceeding £100 and a further fine not exceeding £10 for every day during which the offence continues after conviction.

Liquidation.—It is the duty of a liquidator of any company which was being wound up on 4th August, 1920, or is wound up after that date, and is liable to Corporation Profits Tax, to give notice to the Board of Inland Revenue. The penalty for failure is as with "Returns" (*ante*).

A liquidator, receiver, etc., shall not distribute the assets until provision (to the satisfaction of the Board of Inland Revenue) has been made for Corporation Profits Tax for which the company may be liable. A liquidator, receiver, etc., who breaks this provision is liable to a fine not exceeding three times the tax payable.

Fictitious Transactions.—Fictitious or artificial transactions for the purpose of avoiding Corporation Profits Tax are prohibited by sec. 55 (4) and contravention of this is met by a fine, on summary conviction, not exceeding £500. The company is liable, except in the case of a foreign company, when the agent, manager, factor, or other representative is liable.

Assessment and Payment.—The tax is payable, by sec. 56, on the expiration of two months from the date of assessment (unless the Board of Inland Revenue otherwise directs—sec. 54 of the Finance Act, 1921).

The assessment is on—

(*a*) The company, if a British company.

(*b*) The company, in the name of any agent, manager, factor, or other representative, if a foreign company.

Additional Assessments.—A first or additional assessment may be made at any time within three years after the end of the Accounting Period. See sec. 36 of the Finance Act, 1923, which substitutes six years.

The Revenue may make estimated assessments in the absence of satisfactory information.

Recovery.—The tax is recoverable as a debt due to His Majesty and, in the case of a foreign company, from the person in whose name the company is chargeable. Where the tax is less than £50 it may, without prejudice to any other remedy, be recoverable summarily as a civil debt.

Appeals.—Appeals may be made to the General and Special Commissioner (p. 332) and a case may be required for the High Court (p. 338).

Control Abroad.—See *Saxone Shoe Co.* (*France*), *Ltd.* v. *I.R.* (1923), where liability exists even though the control is abroad and there is no liability to Income Tax. See also *Alianza Co.* v. *I.R.* (1923).

See *Gloucester Railway Carriage and Wagon Co.* v. *I.R.* (1923), *re* letting wagons on hire.

See *I.R.* v. *Westleigh Estates Co., Ltd.* (1923), where a company was formed to administer testamentary property and was held not to be liable.

Mutual Profits and Clubs.—See *I.R. Eccentric Club, Ltd.* (1923), where the club was held to be liable as a mutual trading concern within sec. 53 of the Finance Act, 1920.

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